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THE PROMULGATION OF LAW

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"The impression of an inward principle," asserted Thomas Aquinas, "is to natural things what the promulgation of law is to men; because law, by being promulgated, impresses on man a directive principle of human actions."[1] Promulgation is of the very essence of law, and a *sine qua non* of legal obligation.[2] This is true both logically and historically.

The very idea of obedience presupposes knowledge of that which is to be obeyed, without which knowledge there could be only the coincidence, never the obligation, of obedience. If human relationships are to be calculable, the people of a community must know, and know in advance, the rules by which they are to act and by which they may expect other men to act. Here is a proposition of such obvious force that any conception of legal obligation is almost bound to deal with it as an ethical obstruction to law enforcement which must be obviated by promulgation and a supplemental overall presumption that "everyone knows the law." And this injunction that "the law must be made known," in theory if not in fact, is also a commonplace moral stipulation so compelling that in

[1] Aquinas, *Summa Theologica*, Vol. VIII, 36.

[2] "A bare resolution confined in the breast of the legislator, without manifesting itself by some external sign, can never properly be called a law. It is requisite that this resolution shall be notified to the people who are expected to obey it." Blackstone, 'Introduction,' *Commentaries*, Sec. II, 44. "Wherefore, in order that a law obtain the binding force which is proper to a law it must needs be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation. Wherefore promulgation is necessary for the law to obtain its force." Aquinas, *op. cit.*, 7–8. "A law is not really law until it has been made known." Gratian, *Decretum Gratiani*, c. 3, dist. VII. "In order for a law to exert its force, knowledge of the legislator, and of the law as well, is required on the part of one for whom the law is passed." Pufendorf, *Elementorum Jurisprudentiae Universalis Libri Duo* (trans. by W. A. Oldfather), Vol. II, 154–155.

solemn lip-service to it modern jurisprudence perpetuates a presumption which, logically, divests the vendors of legal knowledge of their chief office, deprives the judiciary of its interpretative function, and makes something worse than false prophets of judges who are reversed by courts of final appeal.[3]

The practice of promulgating law by the public exhibition of codes was almost universal among ancient legal systems.[4] And, although in natural law theories the obligation of obedience was characteristically moral rather than legal, the idea and the language of promulgation were in medieval thought adopted from the ancients and put into descriptions of natural law and custom. In addition to actual publication, the law was variously promulgated by God or reason, by custom or tradition, and by the mere fact that people through their representatives were constructively present in the body which affirmed or found the law, the appropri-

[3] See Frederick G. McKean, in *St. Louis Law Review*, 96–107. The author argues that: (1) the maxim, *Ignorantia legis neminem excusat*, should not be compounded in a syllogism with the presumption of legal knowledge; (2) the maxim does not require the presumption of legal omniscience to support it; (3) it could be amply justified in terms of pure expediency; (4) it has been abridged and discarded so many times as to be unworkable. See also 32 *Harvard Law Review*, 283–285. Here the maxim of inexcusable ignorance is itself condemned as a "decrepit doctrine unsupported on principle and unjust in operation," which should be abolished by legislative act "establishing mistake of law on an equal footing with mistake of fact."

[4] Wigmore supplies a noteworthy exception, namely, the Japanese code of 1790, the rubric at the end of which prescribes that it is "not to be seen by any but officials concerned." *Panorama of the World's Legal Systems*, Vol. II, 483–484. "In general, the laws and legal decisions were not publicly promulgated; they were circulated in manuscript for the use of officials only . . . and were not addressed to the people." *Ibid.* Wigmore's explanation of this apparent *contradictio ad absurdum* is in terms of a then prevailing conception of justice, the belief in a "rule of men" rather than a "rule of law." Laws, he says, were commands addressed to the rulers, which did not need to be generally circulated. After the "Burning of the Books" (Code of Chow, 212 B.C.), the ruler decreed: "Whoever wants to know the laws may go to the magistrate and learn of them." Wigmore, *op. cit.*, Vol. I, 158. Plato does not touch upon the problem of promulgation as it relates to the "rule of men," because there is no place in the ideal state for an average rule, for equitable treatment of like cases, or for crystallized intelligence. Plato's codes are introduced with the restoration of law in his second-best state of the *Statesman* and the *Laws* when the divinely-mad philosopher king and his art are consigned to an imaginary guardianship and room is made for habit, for convention, and for law. In ancient Chinese philosophy, the much quoted saying of Confucius, "Let the people abide by the law, but let them not be instructed in it," is to be explained in these terms. Confucius believed that the only true government was one which relied on the unbridled virtue of the men in power. "I can try a suit as well as other men," he says, "but surely the great thing is to bring it about that there will be no going to law." See *Analects*, bk. XII.

ate method depending in each case upon the choice of competing assumptions as to the nature of law.

Medieval philosophy prided itself on its inclusiveness; indeed the system of Aquinas is a kind of theological apology for all observed facts. So it is not surprising that the ideas of promulgation instanced above comprise the entire list of formal theories, with only one significant exception, namely, the point of view stated by the eighteenth-century reformer, Jeremy Bentham, which does not assume the propriety of the existing order, but argues for radical reform. Since each of the theories carries with it the presumption of legal knowledge consequent upon promulgation, the five methods of promulgation mentioned above may each be cast in terms of a distinct legal presumption:

(1) Promulgation by God and Reason

Law is nothing more than a body of preëxisting moral principles which everyone may be presumed to know, since God promulgates them by engraving them on the hearts of men.

(2) Promulgation by Custom

Everyone is presumed to know the customary laws, because customs derive their peculiar sanction from the unanimity of assenting opinion, which implies previous knowledge of the law.

(3) Promulgation by Publication

Everyone is presumed to know everything he might know by reading the law, and everyone is exposed to the possibility of acquainting himself with the law through the posting of statutes in conspicuous places and other forms of publication.

(4) The Fiction of Constructive Presence

Everyone is presumed to know the law because he is constructively present through his representatives in the legislature which finds or makes the law, and is, in judgment of law, party to each measure passed.

(5) Promulgation Consequent on Reform

In so far as it fails to accord with fact, the presumption of legal knowledge symbolizes the tyranny of law. In modern jurisprudence, promulgation necessarily implies not only codification and publication of laws, but a new jurisprudence, built upon a common philosophical base for all laws, a "reason" pervasive enough to direct the rationale of every legal rule to a single center.

I

As early as the twelfth century, "excusable ignorance" was asserted as a moral maxim by Gratian, who declared that "ignorance of the civil law may be condoned, but ignorance of the natural

law is always to be condemned in those of mature years."[5] The distinction between the two kinds of law is, of course, based on the identity of the latter with human reason and the consequent presumption of legal knowledge which such self-apparent identity permits.

In fact, each kind of promulgation instanced above turns upon the assumption as to the nature of law and the applicable presumption in each case. If, as Aquinas asserts, "the natural law is promulgated by the very fact that God instilled it into man's mind so as to be known to him naturally,"[6] such a law may be presumed to be known without a human promulgation and without violence to the facts. If "God is its promulgator" as well as "the author and enforcing judge,"[7] every intelligent being may be presumed to know it, and as Burlamaqui affirms, the obligation to obey it might well be absolute under any legal system:

> " . . . there is no need to ask whether God has sufficiently notified his laws to man. It is evident that we can discover all their principles and deduce from them our several duties by that natural light to which no man ever has been refused. It is in this sense that we understand what is commonly said, that the law is naturally known to all mankind . . . everything being rightly considered, the law of nature is sufficiently notified to empower us to affirm that no man at the age of discretion and in his right senses can allege as a just excuse an invincible ignorance of this article."[8]

One of the intrinsic attributes of law in the Stoic definition which made it morally binding and, in fact, natural, was its identity with "this reason [which] is law when firmly fixed and developed in the human mind."[9] In spite of the complexities which are introduced into the promulgation of natural law by its association with the Mosaic Tablets and other systems of law too holy to be generally intelligible, the conception of a law of nature "written on men's hearts," a law "distinct from what St. Paul recognized as

[5] Carlyle, *Medieval Political Theory in the West*, Vol. II, 106.

[6] Aquinas, *op. cit.*, 8. See also Pufendorf, *op. cit.*

[7] Cicero, *De Republica* (translated by C. W. Keys), bk. III, ch. XXII, 211.

[8] *Principles of Natural and Political Law* (trans. by Nugent), 126–129.

[9] Cicero, *De Legibus*, bk. I, ch. VI, 317–321. Certain engaging complexities are introduced into the promulgation of natural law by its identification or association with a law too holy to be generally intelligible. See Aquinas, *op. cit.*, 9, 10, 29–31, and St. Germain, *Doctor and Student*, Chap. I, 4. According to Francisco Suárez, natural law is promulgated in a twofold way. "First, by natural reason; secondly, by the law of the Decalogue written on Mosaic Tablets." *De Legibus Ac Deo Legislatore* (quoted from J. B. Scott, 22 *Georgia Law Jour.*, 405, in Jerome Hall's *Readings in Jurisprudence*).

the revealed will of God,"[10] passed into medieval thought as a Christian political notion, implanted itself in a main stream of legal theory, and is still serviceable in tempering the urgency of actual publication, codification, or other legal reform.

II

If laws may be promulgated simply by engraving them on human hearts and be presumed to be known by reason and conscience, they may also be made known, as Plato suggests, by being "embalmed as national customs."[11] Possessing their own peculiar virtue of natural notoriety, customs may be presumed to be known by tradition and usage without being "written down on triangular tablets."[12] In the case of pure custom, that which derives its sanction from a community's spontaneous reaction against violators, there appears to be no need at all for actual publication, since the spontaneity of its appeal to obedience presupposes knowledge of, as well as assent to, that which is to be obeyed. In early medieval thought, when law was uniformly conceived as preëxisting in the form of immemorial customs, Aristotle's anarchistic assertion that time alone "can give law the power to command obedience"[13] was expressed in even more clear-cut terms. Not only was custom often regarded as binding merely because it was ancient; it was also held that no law, whoever promulgated it, had any real authority or validity until it was ratified by common usage.[14]

Thus an alternative attribute of medieval law which made it naturally known was its "promulgation by custom," which, according to James Wilson, who perpetuated medieval notions of law in American legal theory, "is a silent but real promulgation," and the happiest way of governing mankind, because it gives the strongest kind of evidence that common consent is implied.[15] This custom-content is a quality of law so essential to modern

[10] St. Ambrose, St. Hilary of Poitiers, St. Augustine, and others of the church fathers acknowledge the existence of a self-promulgating law of nature, distinct from what St. Paul recognized as the revealed will of God, "a law written on men's hearts, recognized by men's reason." Carlyle, *op. cit.*, Vol. I, 83, 104–106.

[11] *Politicus*, Dialogues of Plato (Jowett), Vol. III, 584.

[12] *Ibid.* [13] *Politics* (Jowett), Vol. I, 100.

[14] Carlyle, *op. cit.*, Vol. II, 62-63, 155–156. See Aquinas, *op. cit.*, 80–81.

[15] James Wilson, *Works*, Vol. I, 57. See also McIlwain's *Constitutionalism and the Changing World*, 145.

jurisprudential rationalization that no imperative theory of law can be accepted for all purposes. Assuming as it does the pre-existence of law behind the judge and the ultimate propriety of the existing legal system, the common sense identity of imperative law and self-promulgating custom is still being formally enlisted in support of the presumption of legal knowledge[16] and effectively cited in opposition to codification[17] and other legal reform which aims directly at the promulgation of legal rules.

III

The tendency of modern legal theory to define law in terms of will-content and the sheer bulk of modern legal systems each introduces a new difficulty into the problem of promulgation. When law is expressed in terms of will, an actual publication is required to make it known, for people can discover for themselves and follow only that which really preëxists in the form of reason or custom.[18] Then again, when the volume of law becomes so immense that the mass of people cannot even recognize or identify legal situations as they are confronted with them, or determine even by reading or consulting a lawyer what the rule of law is in a particular case, the principle of promulgation poses a dilemma for which Blackstone's maxim, everyone is presumed to know what he might know, is but a formal apology for the unknowable character and size of a law that cannot be promulgated.[19]

Although it is thus the will-content of law which makes human promulgation necessary and natural notoriety which makes mundane advertisement less urgent, the history of promulgation

[16] "Human customs everywhere fit themselves into the law. As a rule, whoever follows these customs may be sure of not offending the law. Only in this way can the ordinary man, to whom all the rules are not accessible in practice, escape the disagreeable consequences of the law." Leonard, "The Vocation of America for the Science of Roman Law," 26 *Harvard Law Rev.*, 289–407.

[17] See p. 1077 and n. 82.

[18] This kind of reasoning is implicit in the teachings of Marsiglio of Padua, one of the first men to point out that laws are not discovered in the sky but made in legislative assemblies. Perhaps Marsiglio's argument that law is not valid until promulgated is suggestive at this point. The principle is acknowledged in the law of Scotland by limiting the presumption of legal knowledge to laws which have been published. Erskine, *Principles of the Law of Scotland*, Chap. I, 1–6. See *A Defense of Liberty Against Tyrants* (edited by Laski), 150: " . . . after the law is once enacted and published, there is no more dispute about it; all men owe obedience to it, and the prince in the first place to teach other men their duty. . . . "

[19] Blackstone, *op. cit.*, bk. I, ch. II, 185.

does not fit snugly into a set of syllogisms. The coëxistence of competing assumptions as to the nature of law, together with the fact that social wisdom may suggest a course of action which does not accord with the prevailing philosophy of law, has compounded the ideas and practices of promulgation. Actual publication may, for example, give general publicity to rules which have been privately promulgated to persons in authority or exclusively known to select groups. Some of the most primitive codes were thus elaborate promulgations of simple rules, benevolently intended to give permanent publicity to the laws which gods had privately communicated to the kings.[20] The value of the Twelve Tables of Rome and of other ancient codes in Greece and Italy consisted, says Maine, in the publicity which they gave to customary laws, knowledge of which had been unscrupulously monopolized by an aristocratic oligarchy.[21] In Christian thought, the ancient practice of engraving laws upon tablets and "publishing them" to the people had a kind of divine counterpart in the Mosaic Tablets, which are sometimes regarded as re-promulgations of the natural law that had been lost at the fall of man.[22]

In some instances, promulgation was intended to give authority to rules of law. It was a maxim of Roman civil law that whatever rules were promulgated by the prince had the force of law; contrariwise, that the emperor's edicts were not binding until promulgated.[23] The promulgation of positive law which Aquinas proposed as one of the four essential attributes of a true law served, however, to publicize as well as to authenticate.[24] By such a pronouncement,

[20] Most of the ancient codes were exhibited publicly by inscribing them upon scrolls or tablets. For accounts of the various methods of promulgation, see Wigmore, *Panorama of the World's Legal Systems*; Kocourek and Wigmore, *Sources of Ancient and Primitive Law*, Part III; Diamond, *Primitive Law*, Chaps. IV–X.

[21] Maine, *Ancient Law*, 13. In primitive Iceland about 1000 A.D., the solitary official of the republic was called the *Lögsögumator*, which meant speaker or declarer of the law. It was his duty to recite aloud, in the hearing of the greater number present at the Ting the whole law of Iceland. He was bound to answer everyone who asked him what the provisions of the law actually were. Bryce, *Studies in History and Jurisprudence*, 275. A more refined sort of declaratory promulgation was practiced in early Roman law. The emperors, by the use of a 'judicial rescript,' would reply to a request for instruction of law on a particular case, an early antecedent of the declaratory judgment. Wigmore, *op. cit.*, Vol. I, 188.

[22] Carlyle, *op. cit.*, Vol. I, 104–105; Vol. II, 111. See Aquinas, *op. cit.*, 51–52.

[23] *Ibid.*, Vol. III, 41, 46; Blackstone, *op. cit.*, Intro., Sec. II, 45.

[24] See Webster's Dictionary for distinction between promulgation and publication.

the law of nature was thereby particularized, made more definite, and impressed upon man.[25] And by the same pronouncement a color of authority was given to positive law, which, although it emanated from the universally valid law of nature at the top of the cosmic legal hierarchy, had to be promulgated by authority of the public personage to whose care the welfare of the community was entrusted.[26]

Sometimes, however, three purposive ideas, participation (or ownership), publicity, and authority, were compounded in the medieval mode of promulgation. The publication of customary laws actually was designed to give publicity to customs already binding on man, while at the same time acknowledging the authority and the participation of the king, the wise men, or the people.[27] After the prevailing practice had been ascertained by those who knew, not only was the result promulgated in the sense that it was reduced to writing and put into force by authority of the king and those who had to observe it, but the "discovery" was also set forth in the form of a statute or assize, in order that there might be no further doubt about it.[28] "The law was primarily custom; legislative acts were not expressions of will, but records or promulgations of that which was already binding upon men."[29]

The idea of promulgation was conditioned again by the civil law maxim that assent of all those concerned, *omnium utentium*, was necessary to give legal force to a measure.[30] Although one method of satisfying that injunction consisted merely in the attachment of enacting clauses which declared that the statute was passed with the advice and consent of all those concerned,[31] more substantial measures were taken by the church, "which long has exalted the principle of promulgation,"[32] and by the English

[25] Aquinas, *op. cit.*, 36–57. See also *Vindiciae contra Tyrannos* (ed. by Laski), 144. [26] *Ibid.*, 7–8.

[27] Carlyle, *op. cit.*, Vol. II, 46–47. See also McIlwain, *op. cit.*, 154–160.

[28] See Sabine, *History of Political Theory*, 203–204.

[29] Carlyle, *op. cit.*, Vol. III, 41. As Fortescue says, the laws of England are natural, customary, or statute: "the two former, when they are reduced to writing, and made public by a sufficient authority of the prince, and commanded to be observed, they then pass into the nature of statutes." Fortescue, *De Laudibus Legum Angliae*, ch. XV. (Quoted in John Dickinson's *Administrative Justice and the Supremacy of Law*, 86–87).

[30] McIlwain, *op. cit.*, 145, 147; Carlyle, *op. cit.*, Vol. VI, 136–140.

[31] Sabine, *op. cit.*, 204–205; Carlyle, *op. cit.*, Vol. I, 236–237.

[32] A. Van Hove, "Promulgation in Canon Law," *Catholic Encyclopedia*.

Parliament. It was not until the fifteenth century that the church abandoned provincial promulgation by traveling bishops and special envoys and resorted to a formal posting of papal edicts at Rome only.[33] In fourteenth-century England, the provincial publication of statutes which proclaimed and affirmed Magna Carta and other immemorial customs of the realm is said to have been one of the chief functions of Parliament, some doubt existing as to the validity of these declaratory statutes unless they were published in town and borough.[34] When the composition of Parliament settled down and ideas of representation began to take form, it was then possible to rationalize the practice of attaching justificatory preambles to statutes into a judicial fiction by which every Englishman was, in judgment of law, presumed to know the law because he was constructively present in Parliament through his representatives.[35] In spite of the fact, however, that after 1366 statutes were binding on mere enactment without publication,[36] they continued until the reign of Henry VII to be published and copies made conveniently available to the public.[37]

The pattern to which Blackstone assimilated the various medieval ideas of promulgation reflects the same circuitous treatment which marked his theory of law. First, he argues in characteristic medieval fashion that "human laws are only declaratory of" and subordinate to the immutable laws of nature which the Creator himself has enabled man to discover.[38] Although as a jurist he acknowledges the fiction of constructive presence to be a valid legal maxim,[39] there is no room in his theory of the nature of

[33] *Ibid.* [34] McIlwain, *op. cit.*, 127–128, 146, 168, 158, 165.

[35] *Ibid.*, 146, 148.

[36] Rex. v. the Bishop of Chichester, 4 Pasch. 39 Edw. III, 7; Coke's *Institutes*, 26.

[37] See Blackstone, *op. cit.*, bk. I, ch. II, 135. Holdsworth does not share Blackstone's view that the continued publication of laws subsequent to the above case was "merely for the information of the whole land." He says that "though it was held in 1366 that such publication was not necessary to their validity . . . publication was very necessary, for, as we have seen, knowledge of the law was essential to all those who had property to protect. . . . The forms of the law and physical violence had come to be alternate instruments to be used as seemed most expedient. This was the reason why knowledge of the laws was so widely diffused at this time." *History of English Law*, Vol. II, 436.

[38] Blackstone, *op. cit.*, Intro., Sec. II, 46.

[39] *Ibid.*, bk. I, ch. II, 185. The point in the common law where this idea of representation dwindles to a bare presumption has not been determined, and, as Bentham indignantly affirms, it is hardly worth the trouble to ascertain. Jurists of such stature as Fortescue, St. Germain, and Coke, although they face the fact that

municipal law for such a harsh syllogism. When he comes to define positive law, he concludes that as a minimum moral requirement every resolution must be "notified to the people who are expected to obey it," or it "can never be properly called a law," since every person must be afforded the possibility of determining for himself what the law is.[40] Finally, the notion of promulgation by custom he specifically equates to the common law. It is "promulgated by universal tradition and long practice (which presupposes a previous publication)."[41]

IV

The only approach to the problem of promulgation which does not tacitly assume the propriety of the existing legal system is to be found, as might be expected, in the uncompromising thought of Jeremy Bentham. In reply to practical men who protested that the law could not be promulgated to the mass of men, Bentham turned the argument around: that was precisely the trouble with it. What was needed was a legal system which people could comprehend.

Promulgation is of special import in utilitarian jurisprudence. The artificial identification of interests which Bentham proposed to accomplish by legislation could not be achieved until the laws were made known to the people whose divergent interests were to be brought into harmony with the general interest of society.[42] And the general interest of society, which is the greatest happiness for the greatest number, ordains promulgation by "instruction" and prohibits promulgation by "suffering"; i.e., it will not permit punishment itself as the instrument for making the law known.[43]

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knowledge of law is an unremitting condition of obedience to law, espouse no theory or fiction of representation to justify the presumption of legal knowledge. According to St. Germain, law gets its name from the manner in which it is promulgated; human law, therefore, must have a human promulgation by the prince. Fortescue, whom Coke is said to have followed on this point, expressly states that statutes, which are themselves only promulgations of natural law and custom, do not pass into the nature of statutes until they are made public by authority of the prince and commanded to be obeyed.

[40] *Ibid.*, Intro., Sec. II, 45–46. This is sufficient. "Once the law is notified or prescribed in the usual manner, it is then the subject's business to be thoroughly acquainted with it, for if ignorance of what he might know were admitted as a legitimate excuse, the law would be of little effect but might always be eluded with impunity." *Ibid.*, 46.

[41] *Ibid.*, Intro., Sec. II, 46.

[42] Halévy, *The Growth of Philosophical Radicalism*, 13, 17–18.

[43] Bentham, *op. cit.*, Vol. VI, 519–520.

Although a legislator may contrive a good law, it is equally imperative, Bentham says, that it be made known to the people who are to obey it. That calls for legal reform, a new jurisprudence:

"That which, for this purpose, we have need of (need we say it?) is a body of law, from the respective parts of which we may, each of us, by reading them or by hearing them read, learn, and on each occasion know, what are his 'rights' and what are his 'duties.' . . . As to these same 'duties,' we would endeavor to be punctual in the fulfillment of them, if we knew but what they were; but, to be punctual in the fulfillment of duties, the knowledge of which is kept concealed from us, is equally impossible."[44]

In the absence of a theory of presumptive notoriety—natural, customary, or fictitious—compatible with his own convictions, Bentham looked upon the prevailing system of English jurisprudence as a tyrannical leviathan of pure will—unknown and unknowable—which imposed an unjust, indeed an impossible, obligation of obedience.[45] "As well might it be out of a man's power to do an act as out of his knowledge that he is called upon to do it."[46] Like the ancient king and tyrant, Caligula, who wrote his laws in small script and posted them upon high pillars the better to ensnare the populace, so the "fee-fed lawyers" perpetuated a similar system of snares—the common law, which could never be obeyed because it could never be known, and could never be known for the simple reason that it could not be promulgated.[47] The lawyer's copartner, the legislator, was likened to "the most stupid of birds," which buries its egg in the sand, and to a military commander who mumbles his orders to himself and does nothing about them. He frames his laws, and then abandons their promulgation to chance, "thinking that his task is finished, when

[44] *Ibid.*, 546–547.

[45] Government by unwritten law Bentham called "government by laws which do not exist"; the idea of natural law he condemned as a mere metaphor; the fiction of constructive presence, whose authorship he incorrectly attributes to Coke, is dismissed as a "notable piece of astutia"; while the bare presumption of legal knowledge he regarded as symbolic of law's "unspeakable tyranny."

[46] *Op. cit.*, 519.

[47] "That a law may be obeyed, it is necessary that it should be known; that it may be known, it is necessary that it be promulgated . . . [but] to promulgate the English laws as they exist at present; to pile the decisions of the judges upon the top of the statutes of Parliament, would be chimerical; it would be to present the seas to those that thirst; it would do nothing for the mass of people who would be unable to comprehend them." *Ibid.*, Vol. I, 157. "It is not so much the science of law that produces litigation, as the ignorance of it." Cicero, *De Legibus* (Translated by Yonge), 406.

the most important part of his work has only begun."[48] The result of all this neglect is that the lessons of jurisprudence are taught *ex post facto* as a man promulgates his rules to a dog. He falls upon the dog and beats him. "The animal takes note in his mind of the circumstances in which he was beaten; and the intimation thus received becomes, in the mind of the dog, a rule of common law."[49] Such is the mystery—and the tyranny—of law:

> "As with other parts of the law by which the fate of every man is disposed of, so it is with this [contract law]. They tell him he ought to know it; they say of him that he does know it; they give him no means of knowing it; they see he does not know it; they do nothing to make him know it; they do everything to keep him from knowing it; they have brought it into a state in which it is impossible for him to know it; they say it is; they insist that it is; they say his ignorance of it is no excuse; and, in all imaginary ways, they punish him for not knowing it."[50]

Bentham's theory of promulgation may be distinguished from mere token publications and from other codification proposals. First, it proposes comprehensive changes in the volume and character of law through codification. Secondly, it differs from other codification proposals, not only in zeal, skill, and lack of realism in approach, but also in defining an "objective" common base for all law and by tying law to a single philosophical principle. If it were possible to promulgate the law as Bentham sought to promulgate it, there would be little need for professional vendors of legal knowledge and almost no room for the interpretative function of the judiciary. Finally, it differs from other theories of natural notoriety by reversing the order of things in this way: that natural notoriety is envisaged as a result of, rather than a substitute for, publication and codification.

Other codes had been drafted and published and their promulgative value demonstrated, but they "accomplished the appearance" rather than the "reality" of promulgation. The real change had to come in the nature of law itself.[51] The essence of codification, which

[48] *Ibid.*, Vol. VI, 519. "In England the business of promulgation is a very simple affair. In the body of every act of Parliament, a day is specified in which it shall be considered as being in force. Nothing is done to circulate it by the King, or judges, or anybody else; but a copy is given to the King's printing office where it is printed in an obsolete obscure type, and inconvenient folio form, and sold, as may be expected under a monopoly, at a dear price; and there it lies for the use of anyone that has money to spare to buy it, and thinks that it is worth his while to do so. Every man is then supposed to know and to understand the law. . . . " *Ibid.*, Vol. IV, 312.

[49] *Ibid.*, Vol. VI, 519.

[50] *Ibid.*, Vol. IV, 481–482.

[51] *Ibid.*, 481.

was only a means to promulgation, consisted in finding a common base for all law, a universally valid principle pervasive enough to direct the rationale of every rule to a single center. Legal relations were too numerous to be remembered, but the "reason" which should underlie every rule of law was intelligible to every one when the law was tied to it in such a way that each rule recalled the philosophic home from which it came.[52] The objective principle of utility was, when the laws were securely anchored in the greatest happiness principle, and properly codified, the most effective instrument of promulgation. The detailed arrangement of parts then become only subordinate views of utility, addressing themselves not to memory but to "reason," which would serve as a "technical memory" when sheer memory failed.

Although Bentham claimed for his greatest happiness principle the attribute of universal validity, he did not pretend that it had also the virtue of native notoriety. It had to be taught, and the method of instruction which he proposed was the promulgation of laws as a great publicity enterprise, accompanied always by the promulgation of justificatory reasons in the form of philosophic preambles.[53] The exhibition of particular rules of law and the philosophic preambles in windows, post offices, shops, theatres, and by every institutional device of publicity would diffuse knowledge of the law in two different respects: the general principles of utilitarian jurisprudence might be taught inductively while particular rules of law were being mastered.[54] And to further lighten the task of memory, particular codes might be set before the classes of people to which they respectively referred in accordance with the four principles of "division and concernment."[55]

[52] *Ibid.*, 160–161. "To give a reason for a law, is to show that it is conformable to the principle of utility." *Ibid.*, Vol. I, 163.

[53] Seemingly, Plato presupposes that the laws will be generally known. The aim of the philosophic preamble in the *Laws* is to persuade the citizens to accept the commands by demonstrating "that they are the logical result of principles in which they believe. . . . His advocacy of the preambles shows the strong feeling which must always be present to the philosophic mind of the value of the *raison d'être* of any claim to allegiance and any assertion of obligation." Ernest Barker, *Plato and His Predecessors*, 305–306. Bentham's advocacy of preambles, however, emphasizes the fact that knowledge of the law is required before persuasion can be added to command. See *op. cit.*, Vol. I, 159–162; also Vol. VI, 519–520. See also the *Politics of Aristotle* (Newman), No. 1, 440. [54] *Ibid.*, Vol. I, 159.

[55] *Ibid.*, 158. The kind and degree of publicity given to the penal code and to contract law suggested particular problems. With regard to contracts and wills of sufficient value, it should be required that they be written upon stamped paper

Whereas the notification of particular codes consisted in an elaborate publicity scheme, an institutionalized program of education is proposed for the promulgation of general legal principles. The General Code, a textbook in law or morals which every schoolboy might readily understand, should be given an important place in the school curriculum as a course in law or ethics, memorized as a catechism, translated into various languages, and converted into poetry.[56] For the instruction of the poorer classes, the former practice of reading laws as a part of the divine service should be revived. The laws relating to husband and wife, for example, might be read at the wedding, those respecting parents and children at the time of baptism.[57]

The successful conclusion of any enterprise which would make legal knowledge universal appears incredible to more realistic reformers. Bentham had no doubts or qualms. If the nations of the world would promulgate according to his instructions the philosophically grounded codes which he would prepare for them, law would be so pleasantly studied,[58] so easily known,[59] so constantly retained,[60] that the professional monopoly of legal knowledge—in fact, the legal profession itself—would have no office to fill. The codes "would send their influence over the moral nature

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bearing upon its margin a notice of the laws concerning that particular transaction. *Ibid.*, 159. For a detailed discussion of contract law promulgation and "promulgation paper," see Vol. VI, 522. The promulgation of the penal code involved a special humanitarian consideration, predicated upon the preventionist character of utilitarian penal reform. Here it was necessary that specific punishments as well as the prohibitions themselves and their reasons should be promulgated, since the natural notoriety characteristic of some criminal laws never extends to the specific punishments which, however, provide the motives legislators rely on for obedience. *Ibid.*, Vol. I, 158. [56] *Ibid.* [57] *Ibid.*

[58] "If the study of law is dry, it arises much less from the nature of the subject, than from the manner, in which it has been treated. . . . The truths developed in the laws are interesting; and when they shall thus have been arranged and their connection exhibited, this study will become interesting to the young, instead of repulsive even to those who are compelled to engage in it. When it shall have been rendered easy of acquisition, it will even become a disgrace not to be acquainted with it." *Ibid.*, 160.

[59] "The terms of the law may be clear and familiar: add to them the reason of the law, and the light is increased; no doubt rests upon the real intention of the legislator: the mind of the reader holds immediate communion with the mind of the author." *Ibid.*, 160–161.

[60] The reasons annexed will serve as a kind of technical memory . . . a kind of guide in those cases in which the law was unknown: it would be possible to judge beforehand what its regulations would be. . . . " *Ibid.*, 161.

of the people . . . they would so infuse themselves into their minds that they would form a part of the logic of the people."[61] The disappearance of lawyers as vendors of legal knowledge is clearly envisaged in an impassioned appeal "to the Citizens of the United States":

"Accept my services,—no man of tolerably liberal education but shall, if he pleases, to know—know, and without effort—much more of the law, than, at the end of the longest course of intensest efforts, it is possible for the ablest lawyer to know at present. No man, be he even without education in other respects—no man but, in his leisure hours—so he can but read—may, if so it pleases him, know more of the law, than the most knowing among lawyers can possibly know of it at the present."[62]

It is to be presumed that lawyers and judges are products of the artificial character of a mature legal system. Whether this artificiality results from the conscious design of the legal profession,[63] the neglect of legislators,[64] or the inexorable progress of civilization,[65] the presence of such professional classes has ostensible implications for the problem of making law known. They may best be treated within the manageable range of American legal history.

V

More than a century before Bentham wasted his eloquence on President Jefferson, all of the early American colonies except Maryland experienced a less doctrinaire codification movement under a peculiar set of conditions.[66] The movement was creative rather than reformative in character. In the absence of such technical apparatus as lawbooks and lawyers, and in the presence of conditions too primitive for a sophisticated legal system, the colonies contrived simple codes which resembled the dooms of the

[61] "If laws were founded upon reason . . . obedience to the laws would come to be scarcely distinguishable from the feeling of liberty." *Ibid.*, 161.

[62] *Ibid.*, Vol. IV, 483. [63] Bentham, *op. cit.*, Vol. VI, 520, 543–544.

[64] *Ibid.*, Vol. I, 157; Vol. VI, 520.

[65] "With the progress of civilization . . . what otherwise would have remained common, becomes appropriated to particular classes. . . . Law perfects its language, takes a scientific direction, and, as it formerly existed in the consciousness of the community, it now devolves upon the jurists. . . . Law is henceforth more artificial. . . . . " Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence* (Trans. by Howard), 28.

[66] Pages 1073–1077 of this study are, for the most part, an intepretation of the relevant material in Aumann, *The Changing American Legal System;* Reinsch, *English Common Law in the Early American Colonies;* and Morris, *Studies in the History of American Law.*

Anglo-Saxon kings.[67] In the seventeenth century, when the laws consisted chiefly of rough principles of native equity, local in character, knowledge of the law was but gradually, and even begrudgingly, abandoned to a professional class of lawyers and judges.[68] Clerks and educated laymen sometimes functioned as vendors of legal skill, but knowledge of the law in the early American colonies was, to a considerable degree, an amateurish pursuit in which the simple codes became an important source of direct legal instruction. The importation of a more elaborate system and the encroachment of a professional monopoly were vigorously resisted for a considerable period after the new world had outgrown its indigenous legal system.

It is interesting to note, however, in connection with the problem of promulgation that the age-old confusion between the actual publication of laws and their natural notoriety was clearly evident in the more theocratic New England colonies, where the "judicials of Moses" were an important source of law.[69] The Massachusetts Body of Liberties, for example, guaranteed residents against punishment except by laws "sufficiently published." There is the characteristic Puritan exception, however, that in case of a defect in a particular law a person might be punished under the divine law as interpreted by the magistracy.[70] An important document drafted by John Winthrop in 1642 illustrates in terms of promulgation the conflict between Puritan legal doctrine and the native equity which was codified and published directly to the

[67] See Reinsch, *op. cit.*, 7, 11, 53–57; Aumann, *op. cit.*, Chaps. I, III; Morris, *op. cit.*, 41–46.

[68] According to Professor Aumann, the extent to which the colonies could and did adopt the provisions of the common law during the course of the seventeenth century is a matter of dispute between two groups of historians. See *op. cit.*, 7–9. Their differences are largely a matter of emphasis and interpretation, however, and have no particular relevance to the subject of promulgation.

[69] Reinsch, *op. cit.*, Chap. IV; Aumann, *op. cit.*, 12, 22, 25. This ambiguity is to be explained by distinguishing between the theory of law and the administration of law in the early New England colonies. Although the Mosaic Tablets and the Bible were usually only secondary sources of law, the inviolable sovereignty of God was part and parcel of Puritan doctrine. Thus the Massachusetts Body of Liberties was not really promulgated as law, but the general court was authorized to consider it as a code of rules having the full force of law. See Morris, *op. cit.*, 30–38; Aumann, *op. cit.*, 10–11; 58–61; Miller, *The New England Mind*, 197–198; Parrington, *Main Currents of American Thought*, Chap. III; Reinsch, *op. cit.*, 13–16; Figgis, *Divine Right of Kings*, 223.

[70] Massachusetts Body of Liberties, *Harvard Classics*, Vol. XLIII, 66–67.

people. "It is needful that all men should know the laws, and their true meanings, because they are bound to them, . . . therefore it is needful they should be stated and declared as soon as is possible";[71] Nevertheless, since God was the only lawgiver and the law was always unchangeable, ignorance of the law was an insufficient excuse for violation.[72]

Although these two sources of law, the will of God and the native common law, were in one respect competitive, both were hostile to the infiltration of lawyers and the adoption of the common law. For reasons of prestige, the magistracy did not wish to relinquish its interpretative function to the judiciary; while a genuine frontier antipathy for a strange legal system and a natural preference for the general intelligibility of an indigenous common law account in part for the hostility which greeted the common law and lawyers in the seventeenth century.[73] The mass of men preferred a layman's law, promulgated by common sense and custom, in spite of its apparent inadequacy to meet the needs of a rapidly growing society.

The codification proposals which spread out over the eighteenth and culminated in the nineteenth century with the Field Code were part of a general movement to improve social and political institutions. In so far as the purpose of the movement to reform legal practices was to promulgate the law, it emanated from two sources. One of the minor points of opposition to the common law in the post-Revolutionary War period was its unfamiliarity,[74] which contributed to an appeal for an American code of law calculated upon the plainest possible principles and expressed in less barbarous nomenclature. At the beginning of the nineteenth century, the most zealous reformers had not yet abandoned hope for a legal system which would make a professional monopoly of legal knowledge impracticable. The idea then prevailed that the publication of judicial decisions served the purpose of disseminat-

[71] *Arbitrary Government Described and the Government Vindicated from That Aspersion* (1644). *Harvard Classics*, Vol. XLIII, 99–100. [72] *Ibid.*, 99.

[73] Reinsch, *op. cit.*, 12; Morris, *op. cit.*; Aumann, *op. cit.*, 46.

[74] "It should be mentioned that a considerable body of opposition to the English common law sprang from sources which were not patriotic or political in character, or influenced by the dictates of some special interest. It was an opposition which was derived from a somewhat different set of circumstances and may be explained as being part of the frontiersman's usual opposition to scientific law." Aumann, *op. cit.*, 82.

ing legal knowledge and intelligence directly to the people. "The publication of such reports," remarked one writer of the period, "is the promulgation of the laws. . . . In no other way is it possible to make them generally known."[75] The same writer may have been a student of Bentham, for he calls special attention to the fact that they were "promulgated along with the principles on which they were based."[76] On the other hand, exhortations to codify came from within the legal profession itself. By the 1820's, the common law had assumed such unmanageable proportions that it was not even known to the lawyers and judges. Some of the more eminent jurists, notably Kent and Story, were bent on saving the common law by promulgating it to the judiciary and to the lawyers.[77]

Field, the reformer whose codes were finally adopted, and then ignored in several states, seems to have had two sorts of promulgation in mind. First, proper codification would consolidate the position of the legal profession by making the law known to the lawyers and judges. Orderly classification, elimination of confusion and uncertainty, and better organization achieve a kind of indirect promulgation by narrowing the area of uncertainty.[78] Secondly, Field's code purported to restore to the layman the possibility of learning what the rule of law was in a particular case by reading the code.[79] The index would serve as a useful guide to persons who could recognize and identify legal situations as they encountered them.

In these reform movements, the preëxistence of law is used as an argument both for and against codification, depending upon the kind of natural notoriety which is attributed to preëxistent law. Pound points out that the conception of natural law was a serviceable theory in the codification movements of the late eighteenth and nineteenth centuries. The judiciary was thought to possess a dialectic which enabled it to find the right rule in every case. "Men

[75] Elijah Paine, Jr. (Counsellor at Law), *Reports of Cases Argued and Determined in the Circuit Court of the United States for the Second Circuit, Comprising the District of New York, Connecticut, and Vermont.* Cf. 27 *North American Rev.* 179, July, 1928. (Quoted in Aumann, *op. cit.*, 73).

[76] *Ibid.* [77] See Aumann, *op. cit.*, 127–129.

[78] As finally adopted, the Field codes were mainly procedural in character. Field's proposals, however, and the arguments which were directed against them centered around the codification of substantive private law. See Field, "Codification," 20 *Amer. Law Rev.*, 1. Compare Field's argument with that of Bentham, *op. cit.*, Vol. VI, 520. [79] *Ibid.*

thought it possible to discover a body of fixed and immutable principles, from which a complete system perfect in every detail might be deduced by purely logical operations, and held it the duty of the jurist to find them, of the legislator to promulgate them in the form of a code."[80] In the Field-Carter controversy, however, the preëxistence of law is offered as a reason why codification is futile.[81] In the view of the historical school of jurisprudence, to which Mr. Carter belongs, codification is both impossible and unnecessary because: (1) judges and legislators necessarily function in a strictly medieval capacity as declarers and promulgators of preëxisting custom; (2) it is only in the exceptional case of doubtful custom that it is necessary to declare the law in a particular decision or statute, for the members of society are familiar with its customs, "and in following them, follow the law."[82] To codify the private law would be to disrupt its orderly unfolding.

For some purposes, the contemporary law exhibits considerable faith in the ability of God and reason to promulgate natural legal principles to the mass of men. In those areas of the common law where conscionable conduct is a familiar standard, the law is never done presuming that man knows the unwritten law because he is a creature of reason and conscience. The natural notoriety of preexistent principles bridges the interstitial areas of the law. Its philosophical identity with reason permits persons to be held responsible under natural principles of justice deduced *ex post facto* by the courts. For most purposes, however, jurisprudential thought prefers Sir Edward Coke's dictum that only lawyers and judges possess the dialectic which lifts the mask of mystery from the law. It is the only point of view consonant with the free functioning of due process, judicial review, and the doctrine of extra-constitu-

[80] Roscoe Pound, *Spirit of the Common Law*, 145–146.

[81] Carter, "The Provinces of the Unwritten Law," 24 *Amer. Law Rev.*, 1–24.

[82] Carter, "The Ideal and the Actual in Law," *Reports of American Bar Association* (1890), Vol. XIII, 217–225. Taken together, the two articles by Mr. Carter referred to above present a curious argument. Since law is essentially custom, Mr. Carter suggests it is, "for the most part," known to the people. And it is unnecessary to codify that which is generally known. On the other hand, codification is impossible for the very reason that the law can never be known to anyone. "One conclusion is easily demonstrated; and that is that it is impossible to write down the law applicable to *any future* transaction because it is impossible to know the law applicable to any future transaction." Thus the law possesses at the same time the opposing virtues of natural notoriety and complete unknowability, both of which argue against codification.

tional limitations.[83] What is needed is a law which exists independently behind the judge but is known to him only, a law which possesses not only the notoriety of the law of nature plus the sanctity of immemorial custom, but also the mysteries of the law of God and the enigmas of accumulated wisdom. As Coke admonished James I, the common law will not lift its veil even for a king.

The direct promulgation of law to the mass of men is, in fact, quite generally regarded as being unnecessary, impracticable, or impossible. In those areas where its common sense identity with custom and reason precludes the need for lawyers, it is unnecessary, as Carter has shown, to promulgate that which is already known and followed. Within that area of law "artificial" enough to permit lawyers and litigation, direct promulgation is impracticable since only a professional could understand it. And in a more refined jurisprudence there still remains an area in which the law is so uncertain, its enigmas so perplexing, that judges within the same jurisdictions differ among themselves as to what the law is. Here promulgation is impossible, for there is no knowable rule to obey. Here the judge acts in a capacity which Confucius approvingly called "the rule of man",[84] and which Bentham condemned as "pure suffering without instruction."[85] The rubric which ended the Japanese code of 1790—"not to be seen by any but officials"—might well be attached to a portion of any modern legal system.

On the other hand, the promulgation principle still imposes certain limitations on legal theory and the enforcement of legal rules. They are chiefly of three kinds: (1) prohibition of *ex post facto* laws; (2) the deferred execution of statutes; and (3) the publication of statutes, ordinances, and administrative rules.

(1) To square the retroactive nature of judicial review with the moral injunction that laws must be knowable in point of time, legal theory supplies the void *ab initio* doctrine. Against the argument that a "court house veto" deprives a person of his right to know what the law is before its obligations attach is set the traditional American theory that a law held to be unconstitutional never existed at all, being void *ab initio*.[86] On a higher level of ra-

[83] Judicial review, whether it is based on an interpretation of the law of nature, the due process clause, or a statutory enactment, rests on the assumption that judges, and judges only, can ultimately divine the mysteries of the law.

[84] Wigmore, *Panorama of the World's Legal Systems*, Vol. II, 483–484.

[85] Bentham, *op. cit.*, Vol. VI. 519.

[86] Rep. David J. Lewis of Maryland, arguing for the Supreme Court bill of 1937 and against judical review, declared; "A court house veto fails fatally, besides,

tionalization, there is a continuing argument as to the retroactive character of the decisional process which centers around a citizen's right to know the law before its penalties can be imposed. The hostility of the legal profession to the so-called realist school of jurisprudence and all systems of legal theory which fail to put the law behind the judge, and the struggle to maintain the preëxistence of law, are standing acknowledgments of the promulgation principle. "The reason," Gray says, "why courts and jurists have so struggled to maintain the preëxistence of law . . . and why Carter says that they are the discoverers of the law, is the unwillingness to recognize the fact that the courts, with the consent of the state, have been constantly in the practice of applying in the decision of controversies rules which were not in existence and were, therefore, not knowable by the parties when the cause of the controversy occurred."[87]

Although there is at least one case in which the Supreme Court held a state law unconstitutional because it failed to supply a knowable standard of conduct,[88] laws which are, as a matter of fact, unknowable will not ordinarily be found contrary to natural principles of justice or to due process of law. Criminal laws, however, which are unknowable in point of time are invalid at common and constitutional law. And according to Blackstone and James Wilson, who see no logical distinction between retroactive civil and retroactive criminal laws, they are invalid because they violate the "promulgation principle" by denying to everyone *ipso facto* the possibility of knowing what the law is.[89] Likewise, the common

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because since the citizen is conclusively presumed to know the law, and is entitled to know whether it is law when it passes, to fashion his conduct accordingly, any veto should take place before the obligations of the law can attach." *Cong. Rec.*, Vol. LXXXI, Part 2, p. 1983.

[87] *Nature and Sources of Law*, 97–98.

[88] In this particular case, the Supreme Court of the United States found a statute to be contrary to due process of law because it failed to provide a standard of conduct which it was possible to know. The Court suggests that the general public or a particular group of persons whom the government seeks to regulate has a right to know what are the rules and standards which have been prescribed for them. International Harvester Co. of America v. Commonwealth of Kentucky, 234 U.S. 216 (1914).

[89] There is one kind of promulgation more unreasonable, Blackstone says, than writing laws in small script and posting them on high pillars. "That is called making laws after the fact." *Op. cit.*, Sec. II, 45. James Wilson, a professed student of Blackstone, also declares that *ex post facto* laws are invalid because they violate in the most flagrant manner "the promulgation principle." The espousal of such a notion by one of the Constitution's framers appears to lend credence to the argument of some scholars that the *ex post facto* clause in the United States Constitution

law rule, that, unless otherwise provided for by statutory or constitutional authority, statutes do not go into effect until the formalities of enactment are complete is based upon the apparent injustice of putting laws into effect before it is possible for them to be known.[90]

(2) A more eloquent acknowledgment of the promulgation principle may be found in state constitutions, many of which provide that, except in cases of declared emergency, statutes shall go into effect a fixed period (usually thirty to ninety days) after the formalities of enactment are completed.[91] The deferred execution of federal penal statutes reflects a similar humanitarian regard for the right of the individual to acquaint himself with the law.[92] This is a kind of constructive notification, "designed to secure, as far as possible, the public promulgation of law before parties are bound to take notice of it, and to obviate the injustice of the rule which should compel parties at their peril to know and obey law which in the nature of things they could not possibly have heard."[93]

(3) The eighteenth-century practice of proclaiming laws officially at public meetings has been abandoned as impracticable, but the colonial forms of posting and distributing copies have been followed to the present day.[94] Provisions in several state constitutions purport to soften the harsh presumption of legal knowledge and to accommodate the legal profession by requiring the publication of state laws as a formal step in their authentication,[95] although Indiana is the only state providing in its constitution for prompt distribution of statutes to counties in the manner of fourteenth-century England.[96] A few states go so far as to exhaust the reasonable

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was originally intended to apply to civil as well as to criminal laws. See O. P. Field, "*Ex Post Facto* in the Constitution," 20 *Mich. Law Rev.* (1921), 315–331. It is to be noted in this connection that the deferred execution and the publication of statutes tend to follow the legal distinction between retroactive civil and criminal laws Municipalities are uniformly required to publish their penal ordinances, while only the most important civil ordinances are usually published; and the delayed execution of federal laws is given special application with respect to punitive measures.

[90] Cooley, *Constitutional Limitations*, 155.

[91] A digest of constitutional provisions relating to the deferred execution and publication of statutes as they affect the presumption of legal knowledge may be found in Cooley, *op. cit.*, 156–157. Such provisions are also contained in Stimson, *Federal and State Constitutional Provisions*, 255–256; also in *State Constitutions, Comparative Provisions*, compiled by the Legislative Reference Bureau of the Michigan State Library.

[92] See Magruder and Claire, *The Constitution*, 41.

[93] Cooley, *op. cit.*, 155.

[94] See Wilson, *op. cit.*, Vol. I, 57.

[95] Cooley, *op. cit.*, 155–156.

[96] Indiana Constitution, Art. 4, Sec. 28.

possibilities of general publicity by publishing their statutes in official state papers and in private journals.[97]

In the field of local law, legislation is still promulgated directly to the people who are expected to obey it. The common practice in cities, towns, and villages is to publish in newspapers or post in conspicuous places all penalty ordinances and the more important municipal legislation.[98] In spite of the fact that such publications are usually read by only a few people who are on the lookout for them, states frequently impose heavy mandatory costs on their municipalities for the publication of ordinances.[99] In some states, the legal rate for such advertising is so great that ordinances are published in obscure journals with little or no circulation in the territory affected by the law.[100] In Indiana, as in other states, the cost of publishing such ordinances in newspapers is sometimes so exorbitant that building codes and other needful legislation cannot be enacted.[101]

One of the interesting phases of the recent and current effort to secure more orderly promulgation of administrative rules is the recrudescence of the argument that law is not truly law unless it is promulgated to the persons who are expected to obey it. One important result of the Hot Oil case[102] and the flood of comment which it provoked lies in the fact that they exposed the existing disorder in the publication of administrative rules. Probably as a consequence, Congress provided for the publication of the *Federal Register*. Of particular interest here is the rhetorical use to which the best literature on promulgation was put. The defective promulgation of statutes and ordinances by instruments which are, to the average citizen, as obscure as Caligula's pillar, seems to be regarded as either inevitable or unimportant. It is not a matter of judicial cognizance or of serious comment.[103] A case, however, in which "the persons affected, the prosecuting authorities, and [even] the courts

[97] In Iowa, for example, statutes are published in two papers of general circulation; in Wisconsin, in a private newspaper which is designated as the "official state paper." In Louisiana, statutes are published in the official state paper, the constitution providing that the laws shall take effect upon publication in the city where the paper is published, elsewhere not until thirty days afterwards.

[98] Gilbert Bailey, *A Definition and Appraisal of Legal Advertising, with Special Application to a Selected Group of States* (Bureau of Government Research, Indiana University, Bloomington, Ind., 1941). [99] *Ibid.*, 43–47.

[100] See Harvey Walker, *Public Administration*, 296. [101] Bailey, *ibid.*, 55.

[102] Panama Refining Company v. Ryan, 293 U.S. 388 (1935).

[103] See Cooley, *op. cit.*, 155.

were alike ignorant" of the law produced a small literature dealing with the right of an individual and the responsibility of the lawyer to know the law.[104] Bentham's "tyranny of an unknown law" was inaptly quoted; analogies were drawn between the obscurity of unnotified administrative rules and the imperspicuity of Caligula's pillar; and attention was called to a number of cases in which the improper provisions for publishing and recording administrative rules counted heavily in the invalidation of state laws involving the delegation of legislative power to administrative agencies.[105]

Some of these cases affirm or imply the right of the individual to know by reading what the law is, as well as the duty of the legislator to assure the legal profession of an orderly record of administrative rules.[106] It is not to be concluded, however, that the judiciary's hostility to improperly promulgated administrative rules is based solely on a suspicion of the administrative process. In one sense, the promulgation of subordinate legislation is to statutes what promulgation by the prince was to natural law in Aquinas' cosmic legal order: the fitting of general rules to particular sets of conditions. For the reason that administrative rules do prescribe standards of conduct which are specific and sometimes technical, it is particularly urgent that they be promulgated in an orderly manner, and even elaborately, to the persons who are expected to obey them. For the same reason, it is worth while to promulgate them, since the duties which they impose are definite enough to be knowable.[107]

[104] Panama Refining Company v. Ryan, 293 U.S. 388 (1935).

[105] C. T. Carr, "Ignorance of the Law", 9 *State Government* 149 (1936): E. E. Witte, "A Break for the Citizen", 9 *State Government* 73 (1936); J. B. Andrews, *Administrative Labor Legislation* (1936), 103–107; L. A. Jaffe, "Publication of Administrative Rules and Orders" (1938), 24 *Amer. Bar Assoc. Jour.* 393–397; J. H. Ronald, "Publication of Federal Administrative Legislation" 7 *George Washington Law Rev.* 52 (1938).

[106] See, e.g., State v. Retowski, 36 Del. 330, 340–341 (1934); Goodlove v. Logan, 217 Iowa 98, 107, 251 N.W., 39, 43 (1933); State v. Grimshaw, 49 Wyo. 192, 209, 53 P. (2d) 13, 18 (1935).

[107] "Now in order to have the meaning of the law rightly understood, it is incumbent upon the promulgators to use the utmost possible perspicuity. If anything appear to be obscure in the laws, its interpretation is to be sought from the Legislator or from those who have been publicly appointed to administer justice in accordance with them. For it is their special function to apply the laws to individual instances by interpretation, or, in other words, to make clear, by the process of specifying individual acts, just what provisions the legislators have made regarding them." Pufendorf, *Elementorum Jurisprudentiae Universalis Libri Duo* (trans. by W. A. Oldfather), Vol. II, 154.

The relation of administration to the problem of making law known is an ancient one. In a fundamental sense, the principle of promulgation is anterior to law itself, which is only one means, far short of ideal, of objectifying intelligence taking the imperative form.

That law is procedurally inferior to the free intelligence of a guardian administrator is assumed in Plato's *Republic* and argued in one of the most vigorous portions of the *Politicus*.[108] Law was omitted from the ideal state because Plato assumed that every man could have a philosopher king always at his elbow directing every act by the art of true knowledge untrammeled by rules contrived to fit average cases. In the *Politicus*, he concedes the practical usefulness of general rules in making the individual aware of the specific function which his particular station demands:

> "The legislator who has to . . . enforce justice . . . will not be able, in enacting for the general good, to provide exactly what is suitable for each particular case. He will lay down laws in a general form for the majority, roughly meeting the cases of individuals; and some of them he will deliver in writing, and others will be unwritten . . . for how can he sit at every man's side all through his life and prescribe for him the exact particulars of his duty.[109]

Yet Plato makes it quite clear that general rules are always prejudicial to the statesman's art: "No one who really had the royal science, if he had been able to do this [sit at every man's side], would have imposed upon himself the restriction of having a written code of laws."[110]

Commonly, theories of law which deal with the management of conduct have not been so provocative as to assume for a moment that general rules are necessary merely because government administrators cannot be always at every man's side. Conventional notions ordinarily argue, as Aristotle did, that general rules prescribing equitable treatment for like cases are not merely indispensable instruments for making criteria of conduct known, but an equalitarian requirement of human dignity and a practical safeguard against "the rule of men." To square the same assumption with observed facts of administration, modern legal thought supplies a useful fiction, lacking in Aristotle, which glosses over the capricious wisdom of administrators with the words "interpretation" or "application."

[108] *Dialogues of Plato* (Jowett), Vol. III, 580–581. [109] *Ibid.* [110] *Ibid.*

As a matter of fact, however, the singular importance of administrative promulgation has been recognized in many ways. Bentham's hope for a code of law intelligible to the average man, implemented by universal instruction in general legal principles, has never been realized, but the publicity schemes which he advocated for his "Particular Codes" have their counterparts in certain techniques peculiar to the administrative process. Affected groups often participate freely in the drafting of particular codes to which they propose to conform, and administrative rules are often "proclaimed" at conferences between officials and affected groups. Direction and guidance in advance of action, exhortation, cajolery, and warnings against eventual penalties help reduce the danger that nonconformity will result from ignorance of the law. Plato's admonition that law, once admitted, should be prefaced always by philosophic preambles which add persuasion to command is accepted as a sound principle of administration.

The fiction that positive law is known to everyone through reason and custom has not been extended to the administrative application of general rules. And the security of Aristotelian generality has been so compromised by the efficiency of Platonic particularity that, in the name of "individual application," administrators may even give persons specific notice and official declaratory judgments of their duties without the "dog law" imposition of a prior penalty.

MOELLER VAN DEN BRUCK: INVENTOR OF THE "THIRD REICH"

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In December, 1922, a resident of Berlin finished the manuscript of a book which, although far from becoming a best-seller, was destined to make history, if only through its title. The book was *Das Dritte Reich*,[1] and its author, Arthur Moeller van den Bruck, was a German intellectual, then in his forties, who had a theory purporting to explain Germany's downfall as well as a vision of her recovery and return to a leading position in the world.

One may well be uncertain as to whether Moeller, had he lived, would have found himself altogether in agreement with the policies and methods of the régime for which he accidentally[2] furnished so attractive a label, or whether he would have found himself among the dead on the morrow of June 30, 1934; but there can be little doubt that the author of *Das Dritte Reich* belongs among the contributors to the creed in the name of which Germany is ruled today.

Moeller van den Bruck was born in 1876 in the Rhineland, the son of a middle-class architect and Prussian official whose family went back to Lutheran pastor stock in Saxony. From his mother's side he inherited Dutch-Spanish blood and, from her Dutch maiden name, the more romantic-sounding portion of his pen name. His formal education was never completed after he was expelled from the *Gymnasium* at Düsseldorf as penalty for his indifference in class, resulting from his preoccupation with modern German literature (social lyrics) and philosophy (Nietzsche),[3] which to the lad of sixteen seemed of vastly greater "social significance" than what his teachers had to offer. Although thus denied the requirements

[1] Hamburg, 1923. A condensed translation by E. O. Lorimer was published as *Germany's Third Empire* (London, 1934, and New York, 1941). The page references in the body of this article refer to the 1934 London edition.

[2] Moeller hesitated between *Das Dritte Reich* and *Die Dritte Partei* as titles for his book.

[3] About Moeller's earlier life and his admiration for the Nietzschean heroic, "dionysian" way of life we know through the reports of his first wife, quoted in part by Paul Fechter, "Das Leben Moeller van den Brucks," *Deutsche Rundschau*, April, 1934, pp. 14–20. Fechter also contributed a biography of Moeller to *Die Grossen Deutschen* (5 vols., Berlin, 1935–1937), in Vol. 4, pp. 570–583, and wrote a brief book, *Moeller van den Bruck; Ein politisches Schicksal* (Berlin, 1934).

for entering a university, young Moeller nevertheless visited several intellectual centers of Germany, where he attended literary lectures, undertook some literary work himself, and became acquainted with kindred souls, all the while finding himself increasingly at odds with the "Prussianized" German state and its policies as of the end of the nineteenth century. As others (notably his hero Nietzsche) had done before him in a similar spiritual crisis, Moeller decided to leave Germany. He had at one time considered the United States as a haven, but in 1902 he went to Paris, leaving behind him his young wife, who was to give birth to his son a few months later. By thus renouncing Germany, we are told,[4] Moeller ultimately discovered the eternal Germany beyond the state, namely, the German nation, of which he was by birth a part and from which, he found, one could not secede at will. This discovery of the nation, aided no doubt by a nationalistic trend among younger European writers with whom he came into contact in France and Italy, manifested itself in Moeller's literary production: he turned from esthetic-critical to historic-political writing.

A work entitled *Die Deutschen* was begun in Paris and appeared in eight volumes between 1904 and 1910, each volume dealing with a different one of what to Moeller appeared characteristic German types, with famous men of politics, letters, and the arts—revealingly enough, no men of science—serving as objects of his sketches. To supplement *Die Deutschen*, Moeller, back in Germany, laid plans for a series of monographs on the values characteristic of other nations (*Die Werte der Völker*). The series was intended to treat the characteristics of "old" nations: Italian beauty, French skepticism, British common sense, and those of "young" nations:[5] German *Weltanschauung*, American will, the Russian soul;[6] but only the volume on Italy was ever published (1913). In 1916, Moeller glorified those Prussian ways which had driven him from Germany in 1902 in his book *Der Preussische Stil*, anticipating Spengler's *Preussentum und Sozialismus* by four years. In it, professing his spiritual kinship to Hegel and Clausewitz, Moeller praised Prussia's tradition, army, and officialdom and urged the "Prussian style" as against the "Viennese style."

[4] Fechter, in *Deutsche Rundschau*, Apr., 1934.

[5] On "old" and "young" nations, see below, note 15.

[6] In collaboration with Merezhkovsky, Moeller had undertaken to translate Dostoevsky's writings into German.

During 1917–1922, Moeller, within his limits as an intellectual, became politically active: he contributed several articles to the magazine *Die Deutsche Rundschau*; wrote an appeal to President Wilson warning against peace policies dictated by France (*Das Recht der jungen Völker*, 1919); debated at gatherings of young intellectuals; helped organize the *Juniklub* in 1919, a select group of conservatives which was the forerunner of the *Herrenklub*;[7] published the magazine *Das Gewissen* (later *Der Ring*) together with Heinrich von Gleichen; and in 1922 edited *Die Neue Front*, a collection of articles issued as a manifesto by Moeller, von Gleichen, and other prominent conservatives of their circle. Finally, in 1923, Moeller published *Das Dritte Reich*, his final statement of his credo of the "new nationalism."

The book accused, challenged, appealed in a style as forceful as Nietzsche's ejaculatory manner of writing. It was the passionate manifesto of an embittered patriot in whom despair was mingled with hope, who felt humiliation over the peace treaty and disillusionment over the political instability of his country and—as it seemed to him—the political blunders of its leaders, and who sensed the need of his bewildered compatriots for an explanation of what had happened to them, as well as for a plan promising future security. He did offer an explanation and hold out a hope to them. The explanation: the influx into German life of an alien principle has corrupted the German nation, caused the political parties to forsake the "lofty spiritual plane of political philosophy" for liberalized policies void of a true political idea, and brought to the fore in November, 1918, revolutionaries unworthy of the name. The hope: a second, a conservative, revolution (that is, a change of fundamental attitudes, not merely of constitutions) must be achieved which would deliver Germany from economic and political distress and make her a great and respected nation again—if the Germans would only abandon all parties and classes and unite as a nation.

II

An examination of German history before and during the Revolution of 1918 precedes the chapters which deal with the book's main purpose, namely, to give an "analysis of the political parties" and their ideologies: of the proletarian-socialist ideology in whose

[7] The *Herrenklub*, it is remembered, took the limelight in 1932 when it was said that the cabinet of von Papen was born there.

name the revolution had been made; of the liberal-democratic one which dominated the Weimar Republic; and of the reactionary-conservative one which opposed both. German history, especially since Bismarck's exit, appeared to Moeller as a record of failure. German policy had lacked the drive of a political idea that might have spurred the Germans on to new accomplishments and kept them from being content with the achievement of their long-dreamed-of unity. This "spiritual exhaustion" (p. 20) was at the basis of the dearth of men capable of carrying on the work of the great chancellor and of "daring to play the rôle of fate" (p. 19) as he had done. Likewise, it was responsible for the Germans' blindness to the untiring activity of their enemies who were busy encircling them. Loss of the World War was the price of that spiritual slackness and political blindness. Yet this price would not have been too high, had the ensuing revolution been more than merely an insurrection, and had it given birth to a spiritually renewed German race (p. 23).

However, the opportunity for such a spiritual rebirth by revolution—an opportunity which presents itself only once in the history of a nation, so the mystic in Moeller asserts (p. 18)—was wasted in 1918. The German people were given a democratic-republican constitution with the best trimmings known to their leaders, but they were not aroused by the "unwanted" events of November, 1918, to political consciousness, to the consciousness of Germany's mission in the world and the potentialities of leadership resting therein. They missed the opportunity to win through a revolution what they had lost through the War, and thereby to change the course of German history from failure to success.

The revolutionaries of 1918 were unequal to their task, Moeller charges with acrimony (p. 144). They were liberal opportunists rather than revolutionary fanatics (p. 204). They stopped after overthrowing the former state, which should have been only the preliminary to a true "spiritual revolution in ourselves and directed against ourselves" (p. 23). Instead of producing any original, German revolutionary principles or ideas, they committed the "immortal stupidity" (p. 24) of swallowing the enemy's bait of international mutual understanding, world democracy, and a League of Nations, and placated him by admitting the guilt of the former régime and playing a cringing policy of fulfillment (p. 28). The men of November, 1918, accomplished no German revolution; they only

imitated the West (p. 37) when they adopted the outworn ideas of nineteenth-century liberalism for their new republican constitution. They never asked what would become of Germany as a nation; they thought only of humanity, reasoning that "if the thought of humanity were victorious . . . then Germany would be cared for among the rest" (p. 225). Clearly, Germany in 1918 had been deserted by her genius—a genius, by the way, which Moeller describes as conservative rather than revolutionary (p. 206). Her people acted bureaucratically, as political dilettanti—"as we seem forever doomed to act" (p. 31)—where they should have acted dæmonically, with Nietzschean boldness (p. 31).

The "liberal" revolution of 1918 cannot be unmade. Yet it may lead to a second, a "conservative," one. While the liberal revolution, in its attempt to overthrow the old social order, was defeated by "eternal conservative forces," by "forces of tradition, of survival, of unalterable law"—especially the "law of gradation," that is, the primitive instinct to form groups, families, nations (p. 230)—the conservative revolution will stay within the continuity of history and thus have for its support "the momentum of the millennia that lie behind" (p. 233). The conservative revolution must be won; if it fails, Germany, and Europe with her, will be doomed (p. 24). Yet there is no reason to suspect that it will fail. Germany, Moeller rationalizes, really won the War militarily by holding out to the end against enemies ten times her strength; she only lost it politically when she let her opponents trick her, with their glittering ideals of liberalism, into "abandoning a war which [she] had not yet won" (pp. 34, 77). Since in 1916 Moeller had written that victory and defeat in war do not occur accidentally, but are assigned by the World Plan according to whether a nation is rising or declining,[8] one might be anxious for Germany's fate. But Moeller hopefully points out that Germans mature slowly and always take roundabout roads to find themselves (p. 35)—as he well knew from personal experience—so that there may yet be a long history ahead for Germany.

III

"The principle of liberalism is to have no fixed principle"—some sort of modern sophism, one might call it; "liberalism is the death of nations" (pp. 77, 78): these are Moeller's major indictments

[8] "Schicksal ist stärker als Staatskunst," *Deutsche Rundschau*, Nov., 1916, p. 161.

against what he considers liberalism. The Germans, until he came along, were unaware of these truths, and even used to be under the illusion that they must adopt liberal ideas and introduce Western institutions in order to deserve not to be looked upon as backward. Imagining themselves in harmony with the general trend of human civilization, they set foot on the path of liberalism and, in 1918 and after, their revolutionary leaders copied the liberal ways into the new constitution. But instead of progress, Germany reaped ruin. Could there, Moeller exclaims, be a more terrible proof than this that "the ways of liberalism are not ours"? (pp. 103, 104).

"Modern liberalism had its roots where the individual shook off the conventions of the Middle Ages" (p. 93), which he claimed, in the name of reason, enlightenment and science, to have the right to do, unaware that in reality he emancipated himself from what had theretofore been the sustaining foundation of his life. From the very beginning, however, liberalism was deluded by a false concept of liberty; for how could man demand "perfect individual and political freedom" if he is "biologically unfree" (p. 95)? This misconception is self-evident today, Moeller states, and the general bankruptcy of liberalism stands fully revealed ever since in 1918 the Allied statesmen, in the name of liberalism, lured Germany into surrender but subsequently broke their promise of a liberal "peace without victory." For then these statesmen abused the principles of liberalism, using them "as means to an end, as camouflage" (p. 82) for their desire to destroy Germany. Yet the scheme may backfire, Moeller warns; the Peace of Versailles may "result in such an exposure of liberalism to the eyes of all the world that liberalism will be unable to survive it" (p. 112).

Among the German youth, distrust and contempt for the principles of liberalism are general, Moeller asserts (rather prematurely at the time of his writing), and all political parties, tainted as they are with liberal ideas, are looked upon with suspicion by youth (pp. 110–111).[9] "If liberalism spelt freedom, then youth would not abandon it. But liberalism bears nowadays no relation to freedom. The liberal is a mediocre fellow. Freedom means for him simply scope for his own egotism, and this he secures by means of the political

[9] Besides, Moeller rejected parliamentary representation on the basis of democratic elections and equal suffrage as the rule of mediocrity, the cult of the average man, as Nietzsche had scornfully written. See Aurel Kolnai, *The War Against the West* (New York, 1938), p. 116, for a critical analysis of this attitude.

devices which he has elaborated for the purpose—parliamentarism and so-called democracy. Liberalism is only self-interest "protectively colored" (p. 110). This kind of criticism is hardly profound, dwelling as it does upon political abuses, expressing the dislike of certain Germans for certain countries labeled "liberal," but skirting the theory itself, merely branding tolerance as unprincipledness and equality as the rule of mediocrity.

Democracy and democratic institutions thus appear to be nothing but handmaidens for the selfish liberal of Western vintage, unfit for importation into Germany. Although describing the Germans as "originally a democratic people" when they stepped out of the twilight of prehistory (p. 122), Moeller contends that they "lack the basis of democracy" and that "no inner craving for democracy has run like a guiding thread through the course of [German] history" (p. 121). Until 1918, it seemed that monarchy was foreordained for Germany, and only the opposition wasted time on discussions of supposedly needed democratic reforms (p. 122). Then the Revolution of 1918 brought all the trappings of democratic government to the German people. What it did not bring—as they were quick to discover—was true democracy, which "exists where the people take a share in determining their own fate" (p. 121). The reason? "Because the people came to power in such circumstances that we could neither respect ourselves nor command the respect of others" (p. 115). Unless "democracy is the expression of a people's self-respect . . . it is no democracy at all" (p. 132).

Post-war democracy in Germany failed to meet Moeller's standard: it did not give the people a share in their own fate. The party system and the electoral process divorced the masses from parliament and benefited only the opportunist parliamentarians and party bureaucracies (p. 120). Few students will deny that serious flaws existed in the application of democracy under the Weimar Constitution, and that the ideal representation of the people would be one which "remains in constant touch with the people." But would they believe with Moeller that "a system of representation based on the estates," which he calls "part of [the people's] organic structure and not a mere mechanical device" (p. 130), would do a better job of representation than the political parties which the estates are to replace? Moeller merely makes an assertion without giving any details of the organization and operation of the estates from which their superiority over parties could be deduced. Mere

name-calling ("organic" as against "amorphous") does not prove much.

IV

If liberalism and democracy each evoke a negative chapter in Moeller's book, socialism does likewise, and not least because of being wedded to the former two. It is not that Moeller rejects socialism outright; on the contrary, his Third Empire demands socialism for its foundation. But it must be a strictly German brand, in accordance with his dictum that "each people has its own socialism." The German socialism, which "is called to play a part in the spiritual and intellectual history of mankind by purging itself of every trace of liberalism" (p. 76), cannot be part of a system of Marxian world socialism based on the international proletariat and justified by materialistic concepts.

Marx is severely censured by Moeller, himself an idealist and irrationalist, for having "offered to men accustomed for tens of centuries to live for and by ideas, the lure of his materialistic thought and his materialistic conception of history" (p. 152). It was sheer presumptuousness on the part of Marx to have ventured to predict historical development. For life and history are incalculable, and if some men do have the gift of prophecy and the power to help to shape future events, such acute "sensibility towards the present" that will make its owner a "confidant of the future" can be claimed only by one who is "physically and mentally at one with the people" and not, like Marx, "a stranger in Europe," a Jew (p. 43). Neither the goal nor the direction of our history is known or predictable, Moeller stoutly maintains, and any cause-and-effect relations can be discovered only in retrospect. As for the historic present, men can be guided only by their will, their courage, and the voice of their inspiration (p. 40). While all of Moeller's writings bear the stamp of his theory of history, some of his earlier ones express it, perhaps, less ambiguously than does his last book. "It is our function as human beings to put into effect the World Plan . . . " and "to testify for predestination in history," he wrote in 1916.[10] "We must make up our minds to believe in missions according to which history moves. . . . Each nation fulfills its mission in history as each man fulfills his in life."[11] This predestination is

[10] *Deutsche Rundschau*, Nov., 1916, p. 162. [11] *Ibid.*

beyond man's influence; "Nature herself makes the decisions."[12] This "metaphysical equilibrium" provides for wars, too. "The final outcome of war is always moral," the Hegelian in Moeller asserts, "as the reasons deciding over victory and defeat are moral reasons";[13] the victors being those destined in the World Plan to take the places of outgoing nations. The War of 1914, Moeller then confidently hoped, would be decided by the "law of rise and decline of nations," according to which "all aging states relentlessly sink down from their hegemonial positions,"[14] on which account Germany, as one of the "young" nations, seemed to have nothing to fear. Two years later, in November, 1918, Moeller explained that it was possible—the World Plan notwithstanding—for a "young" nation to suffer a setback, either because of its political inexperience or impetuosity or because of a coalition of "old" nations conspiring against it, but that a defeat in war will not break a "young" nation if only the peace treaty leaves unimpaired that nation's right of existence, growth, and freedom of movement. "Every war is decided only after the war."[15]

Moeller rejects Marxian socialism, not for its materialistic basis alone, but likewise for its connection with the proletariat. To be sure, he does not deny the existence of a proletariat, and even

[12] *Ibid.*, p. 166. Nature, which expresses her will through nations, appears to be a composite of many elements, including geographic factors, economic spheres, and individual genius. Behind these "there may be still mightier forces: cosmic relationships, in which physical relations are linked with metaphysical necessities" (pp. 166–167). "It is for the thinker to recognize these relations, for the artist to reveal them, and for the statesman to put them into effect" (p. 167). In "Der Untergang des Abendlandes; Für und wider Spengler," *Deutsche Rundschau*, July, 1920, pp. 141–170, Moeller points with emphatic approval to Spengler's rejection of causality in history and revival of historic destiny, and, in general, to the latter's interpretation of history from a "prime phenomenon" (*Urphänomen*).

[13] *Ibid.*, p. 162. [14] *Ibid.*, p. 161.

[15] "Das Recht der jungen Völker," *Deutsche Rundschau*, Nov., 1918, p. 235. Moeller had first developed the concept of "old" and "young" nations—which must not be understood in terms of age in years—in 1906 in *Die Zeitgenossen* ("The Contemporaries"), a supplementary volume to *Die Deutschen*. At that time the "old" nations comprised the Latin, the "young" ones the Germanic, nations, excluding, however, England as a degenerate Germanic nation. In 1918, Moeller redefined the two types. "Age" of a nation now implied possession and saturation, also Bentham's concept of happiness, the ideas of 1789 dressed up as eternal ideals, and the confirmation of Malthus; while "youth" denoted claim, readiness and work, also Nietzsche and Darwin, and the refutation of Malthus. Bulgaria, Finland, and Japan were the "young" nations, and Prussia, their prototype.

acknowledges its "right to a recognized and stable position in a society dependent on industrial enterprise and proletarian labor" (p. 165); but his proletariat is not a socio-economic category, and the reasons given for its existence differ widely from those of Marx.

To Moeller, the proletariat is not the result of a particular stage in a country's internal economic development; rather, it has its roots in more external conditions, namely, the lack of *Lebensraum*. In other words, the population problem—which Moeller scathingly accuses Marx of having evaded (pp. 61, 155)—the pressure of a surplus population, accounts for the existence of a proletariat. Countries with sufficient space, food supplies, and raw materials to take care of their entire population, therefore, have no proletariat (p. 61).

As the existence of the proletariat as a group is not dependent upon a specific type of economic organization, so the individual's membership in that group, Moeller writes, is not based on definite economic criteria characteristic of that particular type of economy, such as the need to sell his labor for want of any other means of livelihood. Rather, being a proletarian to Moeller is a matter of possessing or not possessing certain inner qualities (p. 154). "The proletariat is what remains at the bottom" in a process of differentiation in which "inborn superiority asserts itself" (p. 162). Since raising himself out of the proletariat requires the individual's desire to do so, and since "the inertia of the mass remains," Moeller states that "there always remains a proletariat" (p. 163).

Regardless of one's opinion of Marxism, one must concede to Marx that at least he was capable of producing a definition of the proletariat in which the reasons for existence of the proletariat as a group as well as for its individual members are logically fitted together. This can scarcely be said of Moeller's definition, in which the inequalities of national material possessions create proletariats, while the inequalities of individual human endowment with inner values determine who belongs to the proletariat of a given country. Moeller could hardly deny that such human inequalities exist in all countries without regard to population figures, and that, by his own logic, the lowest group on the economic ladder would everywhere include the bulk of the poorly endowed individuals, yet he would permit the labeling of that bottom group as "proletariat" only in a country that is itself a "proletarian" country, i.e., has an

over-population.[16] Is it possible that the definition was framed, not by the discerning scholar, but by the promotor of a political cause, by the apostle of the "new national mission" (p. 74) of lining up and leading the "have not" nations against the "haves," France and England.?[17]

The solution of the proletarian problem would seem to lie in relieving and ultimately removing the pressure of over-population on a nation's economy. Should Germany, then, attempt to solve her population question by measures of internal settlement, land improvement, and the like, converting the country into a "China-in-Europe"? Most certainly not, if Moeller had his way, for this would require the sacrifice of the "deepest German instincts: the urge to dare, to undertake, to conquer"; and would cause the Germans to "moulder in pettiness" (p. 69). Even before the War, he points out, Germany imported hundreds of thousands of illiterate Italians and Poles to do coolie work for which the "mentally superior" German proletariat, better educated and "qualified for higher grade work," was too good. "The proletarian problem is here crossed by a cultural problem" (p. 64), and Moeller comes close to Hitler's doctrine of the Aryan master race as expressed in Chapter XI of the first volume of *Mein Kampf*, except that he does not specifically claim a monopoly of such superior qualities for the Germans.

As much scorn as for internal colonization, Moeller expresses for all means of restricting the birth-rate as a possible partial solution of the disproportion between population and available space. For one thing, it would be an unheroic solution. Besides, "over-popula-

[16] The German "proletariat," under this definition, might enjoy a higher standard of living than the non-"proletarian" working class of, say, France. Moeller would probably reply that the cultural problem has to be considered along with the population problem (cf. *Germany's Third Empire*, p. 64).

[17] "The population problem . . . prevails amongst all nations who as the result of the War have lost the power to dispose freely of their human resources. . . . The population problem unites all conquered peoples in a common cause; and wherever it remains unsolved the nation is in effect a conquered people" (p. 67). Even Russia, with her vast *Lebensraum*, is included among the conquered, however strained the reasoning may appear. "The English working man can live because his country possesses the power to cater for its nationals; the French can live because they have more space than people. But the Russians cannot live, because they do not know what they can work with or what they can live on; and the German, Italian, and Central European peoples cannot live because they do not know either where they can work or how they can exist" (p. 68).

tion is part of Nature's design," he asserts; hence "Nature must solve the problem" (p. 69). The way she solves it, so it appears, is by allowing the stronger battalions to win. To "break forth forcibly," to "burst our frontiers," to provide new markets, are the methods recommended by Moeller—and obviously believed by him to be sanctioned by Nature—for the solution of Germany's population problem; but no particular country is named as the object of this "socialist imperialism" (pp. 65, 70, 73, 108).

Liberation of the German proletariat thus must be preceded by liberation of proletarianized Germany; its demands for social betterment must wait until her demands upon other countries have been satisfied. "For men can live only if their nations live also" (p. 37). It is in this light, perhaps, that Moeller's statement that "the proletarian is such by his own desire" (p. 161) should be read so as to sound least incompatible with his innate-qualities definition of the proletarian. Perhaps he meant that a proletarian remains a proletarian as long as he is unwilling to endorse a nationalist policy aimed at removing the obstacles that lie in the path of Germany's emancipation from population pressure. No doubt the statement was made as a challenge to organized labor to abandon its "narrow" and "calculating" proletarian class-consciousness, its socialist party affiliations, and its international outlook, and to adopt instead a new nation-consciousness, to realize that "the people of one country are the natural enemies of the people of the other" (p. 169), and to join hands with the Third Party, leader of the new nationalism. It was an attempt to mobilize the proletariat and redirect its revolutionary temper toward a nationalist goal, from a class war to a war of nations, to a "class war against mankind."[18] The proletarian must change his mental attitude first, must think of the nation above the self (p. 140), before he can expect an improvement of his material status. The proletariat must learn "to think of itself, not as a proletariat, but as a working class," the former term implying denial of the nation, the latter, sharing in its communal life (p. 167). "The problem of the proletariat is not that of its outward existence but of its inner quality" (p. 154). It will be finally solved only as the proletarian "realizes that it is not a question of capturing and distributing material wealth, but of taking an intellectual and spiritual share in immaterial values; a question not

[18] Kolnai, *op. cit.*, p. 329.

of grasping, but of deserving, not of arrogantly demanding, but of proving himself of equal worth" (p. 154).

Like the question of the proletariat, the whole problem of German socialism to Moeller is not primarily an economic affair. German socialism is something "organic" and capable of being put into practice, whereas Marxian socialism is mechanical and "purely theoretical." We learn that German socialism implies "a corporative conception of state and economics," and that it is based on "the group, . . . the community, . . . the corporative unity of the whole nation," similar to the guilds of the German past (pp. 74, 221). It will be a socialism based less on material participation than on "mutual understanding and coöperation between economic direction and labor effort, which shall establish harmony between profits and claims" (p. 256). Nothing more specific is revealed about that organic socialism, about details of its organization and functioning, about property or any concrete aspects of the rôle and interrelationships of the economic groups under it. All these things are of less importance to Moeller than the proper attitude of capitalist and workman, a mutual attitude of peace and friendliness where formerly destructive antagonisms prevailed. Such an attitude must be inspired in all by a feeling of loyalty to the nation and a consciousness of commonly sharing in its values. Thus where Marx had demanded that economic classes, and the conditions creating them, be abolished first, whereupon hostilities based on class differences would disappear, Moeller begins by demanding that the classes voluntarily bury their differences over their mutual superior interest in the nation, whereupon the classes will diminish in significance. Once this change of attitude, this major prerequisite of both German socialism and the Third Empire, has been accomplished, "we must *believe*" that the remaining problems of socialism will be solved. German socialism must and will solve them, and on an even higher plane than Marx's; for "socialism begins where Marxism ends" (pp. 75, 76).

V

Socialism must be the foundation of the Third Empire (p. 76). This Empire, the "new and final" one of the "great trinity of empires" (p. 200), is to regain for the German nation the greatness it possessed during the First Empire but lacked during the Second. Is

it also to restore the territory of the First Empire? Moeller gives no direct hint. Austria, of course, must be part of it, and from Moeller's proposed solution of Germany's population question it appears safe to assume that the new Empire is meant to be larger than the "mutilated" Germany of Versailles.

As the Third Empire "exists as yet only in our dreams" (p. 200), Moeller had nothing to say about the concrete form it would take; the whole concept, he admitted, is "misty, indeterminate, charged with feeling; not of this world but of the next" (p. 14). He is certain, however, that, if it is to last, the Empire must be different from its two predecessors, for it would be reactionary to advocate copying the past instead of merely preserving its tradition.

Despite her long monarchical past, the new Germany may well be a republic for the next thousand years; at least, the new Empire may start as a republic,[19] since a monarchy cannot be simply set up at will but must be won (p. 227). Of course, it is not to be a democratic, parliamentary republic, and the "participation" in the new Empire, on which Moeller insists for all groups of the nation, including the proletariat, will not be the old-fashioned kind by means of ballots, but a participation in spirit through the medium of national values shared by all. The new technique remains as obscure as the values themselves and the method of their determination, but the consciousness of these values will be imparted from above and is expected to be readily accepted from below (pp. 248, 249).

The presence of strong leadership, complemented by willingness on the part of the masses to admit their own inability to lead themselves, thus stands out as a requirement for the coming of the Third Empire. Moeller expressly denies the proletarian masses the right and the ability to bring about socialism as Marx had predicted (p. 165). Nor are any of the political parties whose programs Moeller so severely criticized suited for the task. Rather, a Third Party must arise to accomplish it, a party opposed to parties in the old sense, an anti-party (as Hitler's "movement" later claimed to be). It must include "all who wish to see Germany preserved for the German people" (p. 242) instead of for a special group or class. Its

[19] The inadequacy of "empire" for the German term "*Reich*" is evident, for *Reich* does not imply an emperor but may indicate a republic, while on the other hand it denotes more than merely a territory and, to Moeller, has an almost mystical content.

members must be inspired by nationalism and the determination to preserve all that in Germany is worth preserving (p. 243) for the sake of Germany's exclusive task in the world, namely, to maintain the equilibrium of Europe as Austria, Prussia, and the Bismarckian Empire had in turn formerly done (p. 244). The men of the Third Party must be moved by the principles of true conservatism: they must reject evolution and progress as liberalist concepts and believe instead that growth and creation occur, in history as in nature, with organic continuity and in harmony with tradition (pp. 202, 203). They must refuse to be guided by rationalism which has deteriorated into "mere intellectual calculation" and under whose influence mankind has lost hold of moral values (p. 213). Their guide must be more than reason; it must be understanding, which is "spiritual instinct," compatible with emotion but not with reason (pp. 211, 212).

It is from these men, to whom the unity of the nation stands above all else, that leadership must come. It must not be leadership which is claimed as a matter of privilege, as under the monarchy.[20] Nor can it be leadership claimed on the strength of membership in that German party which calls itself conservative. For its conservatism has been merely nominal, spurious, without true spiritual content, ever since it preferred the leadership of Metternich and the Holy Alliance to that of Wilhelm von Humboldt and the Freiherr vom Stein; its liberalized leadership, together with a "liberal" monarch, met bankruptcy in 1918.[21] The Third Empire must have leadership based alone on confidence and merit (p. 228). The true conservative, so Moeller informs us, possesses the quality of leadership as an inborn gift coming to him from the "inherited knowledge" of historical relationships which he has "in his blood" (p. 232).

No program of action is outlined in the book to guide the leadership in the realization of the Third Empire. It can only be hoped that the conservative leaders will be quantitatively and qualitatively adequate to chart the road to the new Germany, and that they will find enough "men with true, simple, straightforward insight, with strong, virile, primitive passions, and the will to act

[20] Moeller credited the Revolution of 1918 with having rendered true leadership possible by sweeping away the monarchy.

[21] Moeller, it appears, is more charitable in his judgment of conservatism than of liberalism. He does not reject the *principle* of conservatism when he censures those who passed as its representatives, as he does in the case of liberalism.

accordingly" (p. 241), who will readily follow their lead. The immediate task, closely linked with that of building German socialism, is to forge Germany again into a nation, i.e., into a community not merely of soil and speech but of living values that are recognized and shared by all its members and defended, as the nation's "most characteristic and precious possessions," against the hostility of other nations determined to further their own values (pp. 245, 261).[22]

The value-consciousness (or nationalism) of the German people had been at its height during the First Empire, when the German nation had believed itself "privileged to represent the Christian and imperial ideals of the West" (p. 246). But in later centuries that nationalism had gradually degenerated into a mere formal patriotism focused upon the state-for-the-sake-of-the-state and upon its pillars, throne, and altar, so that it was in danger of dying out when that state crumbled in 1918 (pp. 246, 247). "The conservative recognizes that human life maintains itself in nations" (p. 224), that is, in communities held together by common values. The nation thus being the main reality to him, he is duty-bound to save German culture and civilization, i.e., German values, from destruction in order to insure the German people's survival as a nation (pp. 248, 249).

Just what those values are, Moeller does not disclose. They are, among other things, "mysterious" as in no other country; "fragmentary and yet complete"; "utterly realistic or entirely space-defying;" "to all appearance, the expression of irreconcilables and incompatibles;" but "closely and fatefully bound up with the history of the nation" (p. 249). Due to the confusion and the many strands in the course of that history, Moeller admits, these values are not easily recognized. Therefore, "it will be the task of the new nationalism . . . to display clearly to the nation the inheritance which belongs to her, because it is German and because it is of value: German human history" (p. 261). Already in 1922 Moeller recognized hopeful signs of a nation-consciousness developing again among the Germans.[23] Tribal, religious, and other antitheses

[22] The similarity with Nietzsche-Zarathustra's advice that "no people could live without first valuing; if a people will maintain itself, however, it must not value as its neighbor valueth," is evident.

[23] Such nation-consciousness did appear in the 1920's in German political groups, especially on the Right and among the younger generation. It even reached,

of long standing seemed to him, not to disappear, but to lose their separating effect among the German people whom the defeat of 1918 appeared to have drawn closer together. There must be room in Germany for Bavarians and Prussians, for Protestants and Catholics, Moeller pleaded; "we must have the strength . . . to recognize and reconcile all the antitheses which are historically alive amongst us" (p. 254).

VI

The book concludes in a grandiose if mystical mood. In forging together the German nation as one single will directed against the West and building a system of German socialism, Moeller points out, the conservative-revolutionary German nationalism is not fighting for the sake of Germany alone. It is fighting for the cause of Europe as well; not for the cause of the Europe of today, "which is too contemptible to have any value," but "the Europe of Yesterday and whatever thereof may be salvaged for Tomorrow" (p. 264). For German nationalism has a mission, a "peculiar prerogative for which other peoples vie" with it: it is "the champion of the Final Empire—ever promised, never fulfilled" (p. 263).[24] The Final Empire, a reorganized Europe, the New Order: we still hear the promise today.

Other nations have wanted empires of their own, "a sphere and empire of Latin, or Anglo-Saxon, or Pan-Slav thought." And the victors of the War have used fine words to ascribe a world mission to themselves. But their efforts, both to annihilate the German Empire and to sponsor their own, must fail, for theirs is a sinking civilization. "There is only *one empire*, as there is only *one church*"; it is *the* Empire for which German nationalism is fighting (p. 263).

By what rights, one might justly ask, does the German nation hold an exclusive claim on "the possible Empire"? And on what grounds has it exclusively been appointed to the "task to be guard-

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in a milder form, over to the Left, notably the "Young-Socialists" and the groups led by the late Professor Hermann Heller. The overwhelming majority of the Socialists and Communists, remembering what they had been taught about nations and internationalism and how they had been treated as outsiders before 1918, remained strictly class-conscious and aloof, however, and looked upon such demonstrations as showing the national colors or singing the national anthem as breaches of proletarian etiquette.

[24] The Empire may not even be expected ever to be fulfilled, as "men set themselves only such tasks as they cannot fulfill" (p. 39). Its main function seems to be that of a myth.

ian on the threshold of values" and to protect Europe against "the ape and the tiger in man" and against "the shadow of Africa" (p. 264)? Destiny, Moeller replies. "To live not for ourselves only, but for mankind, to erect an immortal memorial of our existence, . . . this has been the innermost meaning of all German achievements throughout our history—as it has been the ambition that has fired all great peoples at all times" (pp. 256–257). But might not other peoples likewise be moved by the ambition to live for mankind? Here the World Plan, with its law favoring the rise of "young" nations, as Moeller had written earlier, comes to the rescue of Germany. The turn of the "young" nations is approaching, and Germany, being the custodian of an old culture as well as the bringer of new forms, is at once an "old" and a "young" nation, and thus entitled to claim the leadership of Europe's "young" nations.[25] Still another factor works in favor of Germany's leadership: her central position in Europe. One way for Nature to express her will in history is through the shifting of nations, in accordance with the World Plan. The present direction of the shifting in Europe is from West to East, away from the Western European powers toward the center.[26] "The center is the creative focus of our hemisphere," Moeller reiterated his belief in 1922 (p. 244), even though the War appeared to have vetoed it. "Germany's position is a central one. She is the focus of all political, economic, and intellectual problems. If the world wants salvation, and so far as it deserves salvation, Germany will be able to express whatever this revolutionized world can hope to salvage" (p. 192). Pray "that the degenerate European world will allow itself to be set in order once again by this country and this people"! (p. 241).

VII

Thus in circumstances not unlike those in which Fichte, over a hundred years previously, had issued his *Addresses to the German Nation*, Moeller directed his appeal to the Germans, pleading with them to stand together despite all political, economic, or religious differences and erect a new and glorious if somewhat vague Empire destined to lead the "war against the West." The response was dis-

[25] *Deutsche Rundschau*, Nov., 1918, p. 233.

[26] *Ibid.*, Nov., 1916, pp. 165, 167. The end of the European leadership of France and England, and the prevalence of the ideas they represent, thus appears doubly certain.

appointing, although Moeller should have expected a cool reception, having stepped on the toes of every political party from Right to Left. Except for some small groups of nationalist youth, the German people, if they heard his message at all, chose to reject or ignore it, and were not moved into action until another apostle came with not only a message but also a clever technique of making it heard. When Moeller died, in 1925, by his own hand—whether in despair over Germany's fate or from fear of threatening mental derangement, is not definitely established—his passing was hardly noticed beyond the select circle of his fellow-conservatives. His plea for a second, anti-liberal revolution, however, found an echo and was carried on among radical intellectuals of the Right, as the literature after 1925 shows.[27]

A reading of *Das Dritte Reich* and *Mein Kampf* shows numerous parallels in the thought of the two books' authors. What, if any, influence did Moeller have on Hitler? Fechter reports[28] that the two men once met in the *Juniklub*, in 1921 or 1922, and had a long talk. What they discussed, what they thought of each other and of the other's ideas, whether they felt jealous of one another, we do not know. Neither mentions the other in his book, and since Hitler acknowledges very few ideas that he has adopted from some one else, we do not know whether the younger man was influenced by the older or whether, perhaps, both drew independently upon the same sources. It is therefore possible here only to show briefly some of the similarities and differences in their concepts, keeping in mind that one man was an intellectual and the other a leader of the masses, a "drummer."

Their basic attitudes are quite similar: both are irrationalists, with a good dose of mysticism, and not disposed to think much of the findings of unbiased investigation as the basis or corrective of man's opinions. Both reject materialism and belittle the historic influence of economic and social factors, just as they deny that the proletariat—for whose political support they are bidding—is primarily a social category and that socialism is basically centered about an economic theme. They are equally vague about form and content of their socialist Empire, realizing no doubt that its value

[27] *E.g.*, Ferdinand Fried, Hans Zehrer, and others in the *Tat-Kreis*, a group of radicals of the Right speaking through the magazine *Die Tat;* or Hans Freyer in his book *Die Revolution von Rechts* (Jena, 1931). Numerous other examples can be found in Kolnai, *op. cit.* [28] *Deutsche Rundschau*, Apr., 1934.

as a myth decreases as the clarity of the concept increases. Their hostile—and superficial—views on liberalism, democracy, and Marxism coincide, as do their caustic criticisms of the World War and the Peace Treaty, of the Revolution of 1918 and the Weimar Republic. Only Hitler's are saltier and more vituperative than Moeller's and add a variation by connecting the Jews not only with Marxism but also with liberalism, and by blaming the decline of Germany after Bismarck more specifically on Jewish influence than merely on a general spiritual exhaustion of the Germans. The same general agreement can be noticed concerning most basic points of their positive programs: the new "organic" system of democracy, with leadership by an élite; an aggressive population policy culminating in expansion; a cultural mission for Germany in Europe.

While both men place great store in the nation as the medium for overcoming social and other differences through its demand of ultimate loyalty, they differ as to who is to be included. Moeller, although denying Jews the right of leadership, seems to hold membership in the Third Empire open to all who could subscribe to its by-laws. Hitler, on the contrary, rejects some portions of the German population from the outset, irrespective of their declared willingness to be loyal members, on the ground that they are inherently incapable of sharing the sentiments of German nationalism and of showing a selfless attitude. He builds the new Germany upon a *biological* racial purity as defined by his racial scientists, while Moeller requires a *spiritual* racial purity (in the sense of Prussian traditions). To Moeller, the promotion of the Empire seems to be mainly a function of the teacher of the new attitude, while to Hitler it is a job not only for the Minister of Public Enlightenment and Propaganda, but likewise for the inquisitor, the hangman, and the office in charge of eradicating the internal enemy by racial laws and anti-Jewish pogroms.

Concerning Germany's external enemy, there is likewise a slight difference between the two authors. While both agree in their hostility to the West, Moeller not only felt a certain kinship between Germany and Russia, between Right and Left radicalism, but also looked favorably upon collaboration with Russia (as advocated by Count Brockdorff-Rantzau, the German Republic's first ambassador to Russia) as a means of strengthening Germany's hand in the West. And in the matter of Russian territories as outlets for Ger-

many's over-population, *Das Dritte Reich* was less outspoken than *Mein Kampf*.

The points of difference, however, are outnumbered by the points on which both men were agreed, so that we might conclude that Moeller, were he alive, would hail the Nazi régime as the incarnation of his vision, or at least as a step in the right direction. Also he would see in the Nazi party that Third Party of all revolutionary-conservative nationalist Germans which was to bring about the Final Empire. For the multiplicity of parties has ceased; the masses have only the one party to represent them, lead them with a firm hand, and relieve them of the bewildering task of choosing among many lists of candidates at election time.

But on looking more closely, might Moeller perhaps feel some doubt about how genuine that outward unity of the German nation really is? Might he feel that a unity brought about by governmental decree, simply by declaring disunity illegal and punishable, is not quite what he had in mind when he wrote that the conservative accomplishes his ends, not by force (as the revolutionary and the reactionary do) but by "power emanating from a constructive idea" (p. 194)? Or might he even feel somewhat the same about the Nazi régime as he had felt in 1922 about Italian Fascism, which, he wrote, has "formulated a few powerful rhetorical maxims . . . and enforced them by a reign of terror" (p. 191)?

RURAL LOCAL GOVERNMENT

County and Township Government in 1940.* In times of national or international stress, public attention tends to become focused upon spectacular events transpiring in the nation's capital or chief cities, with little interest displayed in the more prosaic affairs of rural local government. As a consequence, normal progress in rural institutions and activities is likely to be retarded. During 1940, with but few state legislatures in session and popular interest diverted to other fields, little that was distinctly novel occurred in the field of American county and township government. The rural units seemed, in a sense, to be marking time while the national government, and, to a lesser degree, states and cities, concentrated upon various phases of the national defense program. Yet certain developments took place during the year which, if not extraordinary, were nevertheless significant. As in former years,[1] events will be summarized under the following headings: (1) areas; (2) organization and personnel; (3) functions; (4) finance; (5) optional charters; and (6) intergovernmental relations.

I. AREAS

Interest in county consolidation, and in city-county consolidation or separation, was displayed during the year in several localities, although little was actually accomplished in the direction of areal readjustment. A movement to consolidate the three counties of San Francisco, Marin, and San Mateo in California was defeated, or at least delayed, by a ruling of the attorney for the city of San Francisco to the effect that inclusion of Marin county in the merger would require constitutional amendment. In Tennessee, the governing bodies of Davidson county and the city of Nashville were reported to be considering a proposal to consolidate those units of government. Over the opposition of county authorities, the city of Richmond, Virginia, annexed some eight square miles of the territory of Henrico county, including approximately 15,000 inhabitants and 45 per cent of the county's assessed valuation. Under that state's unique system of city-county separation, manager-governed Henrico county will thus lose completely this substantial portion of its inhabitants and taxable property. The Virginia general assembly empowered certain counties to consolidate with adjacent cities by joint agreement of the governing bodies of the units concerned, followed by approval of the voters at a general election. The local governing bodies are authorized to negotiate a consolidation agreement either upon their own initiative or upon popular

* The writer is indebted to Mr. Joseph Deutsch and Mr. Harold R. Cohen, University of Illinois students employed on N.Y.A. funds, for assistance in collecting the materials used in the preparation of this summary.

[1] See this REVIEW, Vol. 31, pp. 884–913; Vol. 32, pp. 936–956; Vol. 33, pp. 1058–1072; Vol. 34, pp. 1145–1166.

petition.[2] Although the general trend was in the direction of facilitating consolidation, a step in the opposite direction was taken in Nevada. There the voters, in the general election, ratified a constitutional amendment prohibiting the legislature from abolishing any county unless such abolition be first approved by the voters of the county affected.[3]

Outstanding among the year's activities relative to the formation of new units of local government were those concerning soil conservation districts. Kentucky and New York enacted soil conservation district enabling acts, the New York statute being of particular interest in that it prescribes the county unit as the basis for district organization.[4] By August 15, 1941, 42 states had enacted soil conservation district enabling legislation, and 588 soil conservation districts, embracing approximately 348,958,484 acres, had been established in 38 states.[5]

II. ORGANIZATION AND PERSONNEL

New Offices. New county offices created during the year were not numerous. Kentucky authorized the appointment of an auditor and an assistant auditor in counties containing first-class cities (i.e., Jefferson county); and the appointment, upon request by the sheriff and the county tax commissioner, of a collector of dog licenses in counties containing second-class cities. The same state provided for the creation of county housing commissions in counties which operate housing projects. Various South Carolina counties were provided, by special acts, with a game and fish commission, county board of health, or county forest fire control organization. Virginia, by special statutes, authorized or established in particular counties a county police force, a county fire department, or a general county registrar (of voters) to replace registrars in the several election districts of the county.[6]

Office Consolidation and Abolition. In New York City, efforts were renewed to abolish the offices of sheriff and register in the several counties within the city and to replace those officials with one sheriff and one

[2] *Acts of Virginia*, 1940, ch. 395; note in *Public Management*, Vol. 22, p. 58 (Feb., 1940); Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 130, 334, 756 (Feb., May, Nov., 1940).

[3] Letter to the writer from Malcolm McEachin, secretary of state of Nevada, Carson City, Sept. 29, 1941. The proposed amendment was given first legislative approval in 1937 and second such approval in 1939.

[4] *Acts of Kentucky*, 1940, ch. 8; *Laws of New York*, 1940, ch. 727; Kenneth Wernimont, "State Rural Land-Use Legislation in 1940," *Journal of Land and Public Utility Economics*, Vol. 17, pp. 103–108 (Feb., 1941).

[5] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *infra*, "Federal-Local Relations."

[6] *Acts of Kentucky*, 1940, chs. 23, 132, 135; *Acts and Joint Resolutions of South Carolina*, 1940, pp. 1715, 1777, 1801, 1850, 1912, 2315; *Acts of Virginia*, 1940, chs. 2, 225, 348.

register, appointed by the mayor and serving the entire city. As in the preceding year, however, these efforts failed because of a court ruling invalidating petitions which would have initiated the necessary charter amendments.[7] Kentucky continued to manifest interest in possible consolidation of the offices of sheriff and jailer, a bill to accomplish that purpose being considered by the general assembly, but failing of passage.[8] The voters of West Virginia, in the November election, defeated a proposed constitutional amendment designed to abolish the office of justice of the peace and establish instead "summary courts" having county-wide jurisdiction.[9]

County and Town Executives. Several counties and towns displayed interest in the manager form of government, with more actual progress in adoption being made at the town than at the county level. Proposals for adoption of the manager plan were rejected by the voters of Onondaga county, New York, and Fairfax county, Virginia. The proposed charter for Onondaga county had been drafted by a charter commission appointed by the board of supervisors, after a more sweeping manager proposal had been defeated by popular vote in 1939, and after a special act to provide the county with a limited manager plan had been passed by the legislature early in 1940 but killed by gubernatorial veto. Fairfax county rejected the optional "county executive" plan of government provided by Virginia statutes, after defeating a special "county board" form of organization made available to that county by the 1940 session of the state legislature.[10] Adoption of manager government by Nebraska counties was again thwarted when the voters of the state defeated a proposed constitutional amendment which would have empowered the legislature to provide the manager plan as an optional form of government.[11] San Mateo county, California, which in 1938 made the office of county executive elective but in 1939 defeated a proposal to abolish the office entirely, in 1940 defeated a proposal to return to the appointive basis. Notwithstanding these adversities, interest in possible adoption of the manager plan

[7] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 426, 756 (June, Nov., 1940). See this REVIEW, Vol. 34, pp. 1149–1150.

[8] Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 132 (Feb., 1940). An act providing for consolidation of these offices was passed in 1934, but was subsequently repealed before becoming effective.

[9] Letter to the writer from William S. O'Brien, secretary of state of West Virginia, Charleston, July 28, 1941.

[10] *Acts of Virginia*, 1940, ch. 396; Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 209, 498–499 (Mar., July, 1940), Vol. 30, p. 54 (Jan., 1941); Marguerite J. Fisher, note in *ibid.*, Vol. 29, p. 819 (Dec., 1940). See *infra*, "Optional Charters."

[11] Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 755 (Nov., 1940); W. L. Pierpont, note in *ibid.*, Vol. 30, pp. 52–53 (Jan., 1941). See this REVIEW, Vol. 34, p. 1150.

was evidenced in several other counties, including Los Angeles, Sonoma, and Ventura in California, and Guilford in North Carolina.[12]

Substantial progress in the manager movement was made among the towns of New England. Manager charters were adopted by action of the town meeting in the towns of Bridgton, Hodgdon, Lincoln, Linneus, and Norridgewock in Maine; Hartford and Randolph in Vermont; and Bloomfield in Connecticut. The annual meeting of the Maine town of Millinocket voted to draft a manager charter for submission at a special election. In the town of Brookline, Massachusetts, a governmental survey resulted in a recommendation that the manager plan be adopted. The town of Jay, Maine, adopted the manager plan, but rescinded this action at a subsequent town meeting before a manager had been appointed.[13]

In Pennsylvania, Harrison township in Allegheny county was reported to have experienced a highly successful first year under the township manager plan of government.[14]

Personnel Administration. Three counties—Santa Clara and San Mateo in California, and Atlantic in New Jersey—provided by popular vote for inauguration of the merit system, bringing to 176 the total number of American counties operating under the merit system by the end of 1940. Also displaying interest in civil service reform was Fulton county, Georgia, where the Atlanta Local Government Commission recommended adoption of the merit system for the county.[15]

Louisiana enacted statutes, applicable to parishes and other local units as well as to the state government, which were designed to curtail particular abuses in public personnel administration. One of these places restrictions upon additions to personnel, or expansion of payrolls or expenditures, during the months immediately preceding a gubernatorial election; while another makes it a penal offense for any person to permit his name to be carried on the payroll of any governmental unit with intent to defraud, or to receive compensation for services not actually rendered by himself, or to receive compensation grossly in excess of the value of services rendered.[16]

Certain developments during the year serve as reminders of the in-

[12] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 268, 427 499–500, 622, 818 (Apr., June, July, Sept., Dec., 1940).

[13] Note in *Public Management*, Vol. 22, pp. 116–117 (Apr., 1940); John Iglauer, "Council-Manager Government," *Municipal Year Book*, 1941, pp. 248–252; H. M. Olmsted, note in *National Municipal Review*, Vol. 29, p. 709 (Nov., 1940).

[14] C. A. Grove, "Township Manager Plan of Government," *American City*, Vol. 56, No. 4, pp. 87, 89 (Apr., 1941).

[15] James M. Mitchell, "Personnel Developments in 1940," *Municipal Year Book*, 1941, pp. 111–115; Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, p. 818 (Dec., 1940), Vol. 30, p. 119 (Feb., 1941); H. M. Olmsted, note in *ibid.*, Vol. 30, p. 108 (Feb., 1941).

[16] *Acts of Louisiana*, 1940 (reg. sess.), nos. 9, 63.

creasing importance of labor unions among county employees, and of professional organizations among county officers. The county commissioners of Carbon county, Utah, entered into a contract with the State, County, and Municipal Workers of America (C. I. O. affiliate) providing for "check off" of union dues. Henceforth, dues will be deducted by county officials from the salaries of county employees. The contract also constitutes the union the sole collective bargaining agency of the employees and guarantees a union shop. In Pennsylvania, the state association of county commissioners voted at its annual convention to inaugurate publication of a bimonthly magazine to be known as *The County Commissioner*.[17]

An encouraging development which is beginning to make headway in the field of local personnel administration involves joint performance of personnel functions by two or more local governmental units, or the performance of such functions for various local agencies by other local units or by the state. Especially noteworthy is the arrangement whereby the civil service commission of Los Angeles county, California, performs civil service work for numerous local units within the county.[18]

Civil service reform in Wisconsin counties may be retarded by a decision of the circuit court of Dane county invalidating a statute of 1939 which authorized the establishment of the merit system by initiative and referendum. The court held that the act was an unconstitutional attempt to delegate legislative authority to the county voters.[19]

The 1940 amendment to the Hatch Act[20] will operate to place legal restrictions upon the political activities of those county and township officers and employees whose principal employment is in connection with any activity financed wholly or in part from federal funds. The impact of this legislation should be felt particularly in county welfare departments administering old-age assistance and other federal-aid welfare services.

III. FUNCTIONS

New Functions. There were a few instances in which state legislatures conferred additional powers upon local governments. Kentucky and Louisiana authorized the creation of housing authorities by counties and parishes, respectively. The Kentucky statute provides that any county may establish a county housing authority (commission) or join with one or more other counties in establishing a regional authority; while the Louisiana act creates parish authorities in parishes having more than

[17] Note in *Public Management*, Vol. 22, p. 152 (May, 1940); Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 756 (Nov., 1940).

[18] See *infra*, "Functional Consolidation."

[19] Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 427 (June, 1940). Civil service systems may still be established in Wisconsin counties by action of the respective county boards.

[20] 54 *Stat. at L.* 767.

55,000 inhabitants, and empowers two or more parishes, regardless of population, to establish regional authorities. As of June 30, 1940, 191 county housing authorities were reported to be in existence in 14 states, Georgia leading the way with an even hundred. Only a few of these, however, were well under way with housing programs.[21]

Virginia counties were authorized to enter into agreements with federal agencies for the acquisition and housing of relics, paintings, carvings, sculpture, and other works of art, and to expend general county funds therefor. Various counties in the same state were empowered to provide water supply systems, fire departments, or police forces. Certain South Carolina counties were authorized by special acts to protect forest lands and promote reforestation, and to regulate the collection and disposal of garbage. An unusual power conferred upon Illinois counties is that of constructing and operating coal processing plants for the treatment of coal to render it smokeless when consumed.[22] The Illinois law was designed to foster the coal mining industry in the southern counties of the state, particularly by enabling those communities to preserve their share in the St. Louis market by producing coal which will meet the requirements of that city's new smoke ordinance.

County Zoning. Zoning ordinances were adopted during the year by two counties—Cook (Chicago) in Illinois and Marathon in Wisconsin. The Cook county ordinance, which displaced interim regulations of a temporary nature, is a comprehensive measure applicable to all parts of the county outside cities, villages, and incorporated towns. Since the county is highly urbanized, the ordinance is devised to meet problems of urban and suburban, rather than purely rural, development. In appraisal of the ordinance, it has been said: "The Cook county zoning ordinance contains within itself potentialities of great public and private benefit. It provides for the intelligent subdivision of land, puts a check on wildcat home building, which creates the rural slums of the future, gives protection against automobile 'graveyards,' dumps, unregulated use of billboards, and other nuisances, reduces or eliminates congestion, safeguards health, and keeps business within limits where it can best serve the community. The ordinance should help families moving outward to establish their homes without fear of depreciation caused by crowding or the encroachment of detrimental building."[23] Although Marathon county is predominantly rural,

[21] *Acts of Kentucky*, 1940, ch. 23; *Acts of Louisiana*, 1940 (reg. sess.), no. 208; *First Annual Report of the Federal Works Agency* (1940), pp. 341–344. See *infra*, "Federal-Local Relations."

[22] *Illinois Revised Statutes*, 1941, ch. 93, secs. 157–161; *Acts and Joint Resolutions of South Carolina*, 1940, pp. 1715, 1766, 1912, 2315; *Acts of Virginia*, 1940, chs. 2, 23, 141, 270, 348.

[23] Arthur G. Erdmann, "The Rural Zoning Ordinance of Cook County," *Journal of Land and Public Utility Economics*, Vol. 16, pp. 438–442, 440 (Nov., 1940).

its ordinance represents a combination of the regulations employed in Wisconsin's cut-over regions and those used in highly urbanized communities. By late 1940, the ordinance had been approved by the town boards of eight towns in the county.[24]

Functional Consolidation. Recent progress in functional consolidation has been most conspicuous in metropolitan regions, where indeed devices of intergovernmental coöperation offer greatest potential advantage. In Milwaukee county, Wisconsin, a plan has been inaugurated whereby the county, the city of Milwaukee, the school board, and several other local agencies coöperate in the purchase of various supplies. Hamilton county, Ohio, has for several years purchased coöperatively with the city of Cincinnati, the public library, the University of Cincinnati, and the city school district. The department of purchase of New York City serves the five counties within Greater New York. The purchasing and stores department of Los Angeles county, California, is reported to be functioning as the procurement agency of more than 200 jurisdictions—school districts, a flood control district, and improvement districts of various types —outside the regular county institutions.[25]

Another field in which functional consolidation is rapidly expanding in the Los Angeles area is that of personnel administration. The civil service commission of Los Angeles county, which in 1936 served only two cities, was reported at the end of 1940 to be performing civil service work, under contractual agreements, for ten cities as well as for the flood-control district and the fire-protection districts within the county. Between 1936 and 1940, the county received more than $6,000 from these various units for examinations and personnel services administered. The county contracts are of standard form, with prescribed fees for work on classification systems, compensation plans, preparation and conduct of examinations, and other services.[26]

The five neighboring Michigan counties of Livingston, Macomb, Oakland, Washtenaw, and Wayne joined in the establishment of the Huron-Clinton metropolitan authority for the purpose of constructing and maintaining parks and parkways. Creation of this special authority had been authorized by the Michigan legislature in 1939, and in the November election of 1940 the project was approved by the voters of each of the

[24] J. M. Albers, "Progress in County Zoning: Marathon County, Wisconsin," *ibid.*, pp. 393–402. By the terms of the Wisconsin enabling act, a county zoning ordinance is effective only in those towns which approve the ordinance by action of their respective town boards.

[25] Joseph W. Nicholson, *County Purchasing* (Nat. Assoc. of Purchasing Agents, New York, 1940), ch. 2; Paul Beckett, "Public Purchasing Methods in Los Angeles County and City," *The Tax Digest*, Vol. 19, pp. 196–197, 211–214 (June, 1941).

[26] Frank M. Stewart and Ronald M. Ketcham, "Intergovernmental Contracts in California," *Public Administration Review*, Vol. 1, pp. 242–248 (Spring, 1941).

counties concerned.[27] The Virginia legislature, in empowering Chesterfield county to construct and operate a water supply system, authorized the county to furnish water to any sanitary district, village, town, or community, as well as to individuals.[28]

General legislation in the field of functional consolidation included statutes authorizing the establishment of regional housing authorities by two or more counties in Kentucky and South Carolina, and by two or more Louisiana parishes. Kentucky provided also that two or more counties may contract for the establishment of a joint library system. Eleven adjoining counties in southwest Georgia afford an interesting example of interlocal coöperation closely akin to the devices usually classed as involving functional consolidation. The respective housing authorities of those counties have entered into an agreement whereby each authority will appoint one member of a general executive committee, which committee in turn will appoint a single executive director to serve the eleven counties. The county authorities will not lose their individual indentities, but will be thus served by a common director, to whom the general executive committee will act as an advisory board.[29]

IV. FINANCE

Significant developments during the year in county and township finance were not numerous. Polk county (Des Moines), Iowa, was reported to have acquired numerous parcels of land during recent years under an amended tax-title law which authorizes counties to take title to tax-delinquent property. Some of the parcels taken over by the county are being used for various public purposes, while several hundred others have been sold at a substantial profit.[30]

In the field of purchasing, mention may be made of the fact that a majority of Alabama's counties are making county purchases through the state division of purchases and stores, with resulting savings in costs which have been estimated at from 18 to 22 per cent.[31] Approximately 75 American counties were reported, as of 1940, to be practicing centralized purchasing; while several metropolitan counties were effecting savings by purchasing coöperatively with cities and other local units.[32]

[27] Data supplied by Harry F. Kelly, secretary of state of Michigan. See this REVIEW, Vol. 34, pp. 1158–1159. [28] *Acts of Virginia*, 1940, ch. 141.

[29] *Acts of Kentucky*, 1940, chs. 23, 57; *Acts of Louisiana*, 1940 (reg. sess.), no. 208; *Acts and Joint Resolutions of South* Carolina, 1940, p. 1687; Elwyn A. Mauck, note in *National Municipal Review*, Vol. 30, p. 120 (Feb., 1941).

[30] Wade S. Smith, note in *National Municipal Review*, Vol. 29, p. 627 (Sept., 1940). Cf. note in *Public Management*, Vol. 22, p. 344 (Nov., 1940).

[31] See Weldon Cooper, note in *National Municipal Review*, Vol. 29, p. 333 (May, 1940); *infra*, "State-Local Relations."

[32] Joseph W. Nicholson, *op. cit.*, ch. 2. See *supra*, "Functional Consolidation."

Kentucky, apparently as a means of circumventing constitutional debt limitations, empowered counties to lease bridges from non-profit corporations, at the same time authorizing the organization of such corporations to erect bridges for lease to counties. Any such corporation is authorized to issue interest-bearing bonds to acquire funds for bridge construction; and the act stipulates that, when the bonds so issued shall have been retired from rentals paid by the county, title to the bridge property shall immediately vest in the county.[33] While extending the life of the Municipal Debt Readjustment Act to 1942, Congress amended the measure to make its provisions available to counties and parishes, and to special assessment districts.[34]

V. OPTIONAL CHARTERS

Optional forms of county government constituted a subject of legislative and popular action in New York and Virginia. The New York legislature amended the Fearon-Parsons optional-charter law of 1936 to make its provisions conform to requirements of the new state constitution. Hereafter, the adoption of an optional form of county government under the statute will not necessitate approval by the voters of municipal corporations within the county, in addition to approval by the county as a whole, unless a transfer of functions to or from such municipalities is involved.[35] In Onondaga county, New York, a charter was drafted under provisions of the Buckley-Reoux law of 1937,[36] but was defeated by the voters in the November election. Madison county was also reported to be considering the adoption of one of the several alternative plans of government offered by New York statutes.[37]

The Virginia legislature offered to Fairfax county an optional "county board" form of government, under which the board of supervisors would include one member elected at large, in addition to members chosen from magisterial districts, and would appoint an executive secretary who would prepare the annual budget and perform various functions of a supervisory or managerial nature. This optional form of organization was not, however, adopted by the county voters.[38]

[33] *Acts of Kentucky*, 1940, ch. 44. The Kentucky courts had already placed the stamp of judicial approval upon use by counties of the "lease with option to purchase." See this REVIEW, Vol. 32, p. 950. The 1940 statute expired by limitation on January 1, 1941. [34] 54 *Stat. at L.* 667. See *infra*, "Federal-Local Relations."

[35] *Laws of New York*, 1940, ch. 638. See this REVIEW, Vol. 31, p. 908; Vol. 33, pp. 1068–1069. [36] See this REVIEW, Vol. 32, p. 952.

[37] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 499, 621–622 (July, Sept., 1940); Marguerite J. Fisher, note in *ibid.*, p. 819 (Dec., 1940). See *supra*, "County and Town Executives."

[38] *Acts of Virginia*, 1940, ch. 396. See *supra*, "County and Town Executives."

VI. INTERGOVERNMENTAL RELATIONS

State-Local Relations. Developments in the field of state-local relations were for the most part directed toward state assistance to local units rather than toward mandatory state control. In Alabama, 34 of the state's 67 counties regularly purchased supplies through the state division of purchases and stores; the state agency being required to make its purchasing facilities available, upon request, to counties and municipalities. Other states reported as having statutes which permit counties to make purchases through their respective state purchasing offices were Michigan, New Hampshire, Pennsylvania, Virginia, West Virginia, and Wisconsin. Very few counties, however, seem to be taking advantage of this opportunity.[39]

Virginia enacted legislation authorizing the state highway commission to lend or rent road-building equipment to cities, towns, counties, or school districts upon such terms as may be agreed upon by the state agency and the local unit concerned. No Maine municipality was placed under the supervision of that state's emergency municipal finance board during 1940, but control of the towns of Frenchville and St. Agatha was assumed by the board during January, 1941. Potential state control over the government of Allendale county in South Carolina will result from a special act placing the government of that county in the hands of a three-member board of directors appointed by the governor. Gubernatorial appointments to the board, however, are required to be made upon the unanimous joint recommendation of the county's legislative delegation.[40]

The Alabama state division of local finance, established in 1939,[41] seemed to be getting off to a good start. The division has no mandatory authority, its functions consisting chiefly in supplying information, assistance, and advice. Counties are required to file with the division three types of financial information: copies of their annual budgets, after adoption; annual debt statements; and notice of intention to sell any new general-obligation or refunding bonds. Since Alabama counties are now examined annually, the division accepts a copy of the annual audit as satisfying the requirement for a debt statement. In an effort to facilitate the marketing of county securities by making pertinent information

[39] Russell Forbes, *Centralized Purchasing; A Sentry at the Tax Exit Gate* (Nat. Assoc. of Purchasing Agents, New York, rev. ed., 1941), p. 15; Weldon Cooper, note in *National Municipal Review*, Vol. 29, p. 333 (May, 1940). See *supra*, "Finance."

[40] *Acts and Joint Resolutions of South Carolina*, 1940, p. 1873; *Acts of Virginia*, 1940, ch. 41; letter to the writer from A. E. Lewis, chief clerk of property division, State Bureau of Taxation, Augusta, Maine, Aug. 5, 1941.

[41] See this REVIEW, Vol. 34, p. 1164.

readily available to potential investors, the division compiles each year a statement of the interest-bearing indebtedness of all counties. These statements, showing outstanding obligations, revenues chargeable with such obligations, and the assessed valuation of property, are disseminated widely through investment channels. When notified of the intention of a county to issue bonds, the division investigates and advises whether, in its judgment, such issuance would have a deleterious effect upon the credit or general financial condition of the county concerned. However, the advice of the division is not binding upon the county, but may legally be disregarded. The division has adopted the practice of giving advance notice of each proposed sale of county securities to all bond dealers doing business within the state; which practice has resulted in keener competition and a consequent advantage to the counties in the form of better prices for their offerings. Although the statutes do not require that the division be notified of intent to issue gasoline tax warrants, the state agency upon request will, as in the case of bonds, send out notices of warrant sales to securities dealers. Some counties have availed themselves of this additional service. Still another service rendered to counties by the division of local finance involves technical assistance to the local units in the issuing of their bonds or warrants. Upon request by a county, the state division will prepare an appropriate schedule of maturities, prepare necessary resolutions and bond or warrant forms, superintend the printing of the securities, procure the required legal opinion approving the validity of the issue, and assist in selling the securities. Since the only cost to the issuing county, when this work is handled by the state division, is the actual cost of printing the bonds or warrants, together with attorney's fees, the local unit enjoys a substantial saving as compared with costs when the proceedings are managed under contract by a private securities house.[42]

Kentucky's state local finance officer[43] reported that, during the first fiscal year of operation of that state's county debt act,[44] hearings had been held on twelve proposed bond issues of nine counties. Of the twelve issues, ten, amounting in the aggregate to $867,500, were approved by the state local finance officer, and two, totaling $400,000, were disapproved. In both instances of disapproval and in five instances of approval, appeal was taken from the decision of the state local finance officer to the county debt commission, an *ex officio* state agency. The debt commission affirmed the local finance officer's decision in five instances, including the two cases of disapproval, and reversed that official's decision in two instances. In all seven instances in which appeal was taken to the county debt commission,

[42] Data supplied by Edward B. Crosland, chief of division of local finance, State Department of Finance, Montgomery, Alabama.

[43] The state commissioner of revenue is *ex officio* state local finance officer.

[44] See this REVIEW, Vol. 33, pp. 1066–1067, 1070.

subsequent appeal was taken from the commission's decision to the courts. At the time of publication of the report, the courts had finally upheld the debt commission in three cases, while four appeals were still pending.[45]

It seems an interesting commentary upon the attitude of Kentucky counties toward the work of the state local finance officer that the submission to that officer of eleven of the twelve proposed bond issues submitted was optional on the part of the counties. Indeed it appears that only two counties which have issued bonds since the enactment of the county debt law have elected not to submit their issues for approval, and that in both of these instances refunding operations had been initiated before the act became effective. Also significant is the fact that the county officers and representatives of bond houses acting as refunding agents for the counties have usually consulted with the state local finance officer regarding refunding plans before any formal action has been taken thereon. This has afforded an opportunity to eliminate objectionable features of any plan before its submission for approval, and no doubt explains, at least in part, why so few of the proposals submitted have been disapproved. Although most of the bond issues thus far submitted for approval have been handled by bond houses, the local finance officer has acted as the county's refunding agent in a few instances, and he reports negotiations under way with a number of other counties with a view to handling their refunding operations at no cost to the counties except necessary expenses such as printing costs and attorney's fees.[46]

New Jersey's local government board is charged by that state's fiscal supervision act of 1938 with the application of corrective measures to local units in the early stages of fiscal difficulties in an effort to forestall serious defaults.[47] By the terms of an act of 1939 transferring to the local government board the duties formerly devolved upon the municipal finance commission,[48] the board is also charged with supervising units actually in default. During 1940, the board released from its supervision eight of the 24 townships which it had supervised during the preceding year under the fiscal supervision act, while only one additional township was placed under the board's jurisdiction. At the end of 1940, four townships were under the jurisdiction of the local government board functioning as a municipal finance commission, one township having been released from such jurisdiction during the year. Although the fiscal supervision act was amended in 1939 to include counties within its provisions, no county was placed under the supervision of the local government board during 1940.[49]

[45] *First Report of the Kentucky State Local Finance Officer . . . for Fiscal Year Ending June 30, 1940.* [46] *Ibid.*

[47] See this REVIEW, Vol. 33, p. 1066. [48] *Acts of New Jersey*, 1939, ch. 385.

[49] Data supplied by New Jersey Department of Local Government. See also this REVIEW, Vol. 34, p. 1163; *Second Annual Report of the New Jersey Local Government Board*, December, 1940.

Federal-Local Relations. State legislatures continued to enact statutes designed to facilitate coöperation between local units and the federal government. Three such laws were adopted by Mississippi. One of these authorizes counties to levy a tax for the purpose of coöperating with the U.S. Department of Agriculture and the Mississippi Experiment Station in the preparation of maps and reports of soil surveys and land classifications; another empowers counties and municipalities to coöperate with the Federal Surplus Commodities Corporation in putting into effect the federal food-stamp plan and providing the necessary revolving fund therefor; while a third authorizes certain counties bordering upon the Mississippi Sound or Gulf of Mexico to coöperate with the W.P.A. or other governmental agencies in repairing roads and sea-wall structures. Virginia counties, along with cities and towns, were empowered to make agreements with federal agencies for the purpose of making publicly available, for the benefit of their respective jurisdictions, relics, paintings, carvings, sculpture, and other works of art. Louisiana provided that the police juries of parishes, as well as designated agencies of other local units and of the state, may donate or otherwise transfer to the federal government lands or other property for use in connection with the national defense program or for other specified purposes.[50]

Local soil conservation districts continued to be assisted in their activities by the Soil Conservation Service of the U. S. Department of Agriculture. By August 15, 1941, that federal agency had entered into "memoranda of understanding" with 479 local districts embracing approximately 297,784,752 acres.[51] Likewise continued was the program of financial assistance to county housing authorities by the United States Housing Authority. As of June 30, 1940, the federal agency was reported to have entered into loan contracts with ten county authorities in eight states, and to have made loan earmarkings for four additional county authorities.[52]

The Tennessee Valley Authority Act was amended to assure to each Valley state and to each county therein a minimum "in lieu" payment equal to the property taxes formerly received from power property purchased by the Authority and reservoir lands allocated to power.[53] During the fiscal year ending June 30, 1941, payments under this provision were made by the Authority to 111 counties, in some of which the federal payment constituted the largest single item of county revenue.[54] By the amendatory act, the Authority was also directed to report to Congress not

[50] *Acts of Louisiana*, 1940 (reg. secs.), no. 75; *Laws of Mississippi*, 1940, chs. 252, 258, 267; *Acts of Virginia*, 1940, chs. 23, 270.

[51] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *supra*, "Areas."

[52] *First Annual Report of the Federal Works Agency* (1940), pp. 348–352. See *supra*, "New Functions."

[53] 54 *Stat. at L.* 626.

[54] Lawrence L. Durisch, "Local Government and the T.V.A. Program," *Public Administration Review*, Vol. 1, pp. 326–334 (Summer, 1941).

later than January 1, 1945, on the operation of the in-lieu payment provision and its effect upon state and local finance. This, it has been suggested,[55] is probably the first time that Congress has instructed a federal agency to make a comprehensive report on the effect of its program upon local government. It appears that there has been general improvement in the character of local government in the Valley states during recent years, and that this improvement may reasonably be attributed in part to the Authority's influence. "Thus," in the words of a current writer, "the T.V.A. program has not been merely a federal program superimposed on state and local government in the Tennessee Valley. It has been, of course, a federal program, directly responsible to the President and the Congress, but in its relationship to local authorities its purpose has been to invigorate their administration, and to provide technical knowledge and facilities in order to free local government from some of the handicaps that have held it back in the past. The close relationship between operating officials of the T.V.A. and those of local agencies—in direct functions such as law enforcement and highway maintenance as well as in staff functions like finance and planning—has made the influence of the T.V.A., although impossible to measure, a persuasive force for the strengthening of local government in the area."[56]

The impact of the national defense program began to be felt, although for the most part indirectly, by counties and townships. There seemed to be a general feeling that those units, as well as cities and states, should curtail their activities and expenditures wherever reasonably possible in order to offset in some degree the increasing burden of federal expenditures for defense. Thus there appeared some tendency to reduce expenditures on locally-maintained farm-to-market roads, that more public funds might be made available for arterial highways of potential military importance. Some decrease in relief expenditures was made possible by increased employment in defense industries. On the other hand, it seemed likely that these savings in local expenditures might ultimately be offset by increased outlays for airports, armories, housing projects, and other facilities related to defense activities.[57]

In amending the federal Municipal Debt Readjustment Act, Congress extended its provisions for composition with creditors to counties and special assessment districts. Counties had been excluded from the benefits of this legislation in 1937 in an effort to meet constitutional objections of the Supreme Court to the original statute of 1934. Apparently Congress believes that the Court would now sustain application of the legislation to counties.[58]

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[55] *Ibid.* [56] *Ibid.*, p. 331.

[57] Cf. Paul W. Wager, "County Government," *Municipal Year Book*, 1941, pp. 243–248. [58] 54 *Stat. at L.* 667. See this REVIEW, Vol. 32, pp. 950–951.

The Political Basis of Federation. A predominant note in the speculations of liberal-democratic thinkers on the subject of post-war reconstruction has been an insistence on the need for "some kind of a federation." As a popular catch-word, "federation" has undoubted propagandist value. It has come to acquire some of the magic properties once associated with phrases like "a parliament of man," "league of nations," and "outlawry of war." For the pamphleteer and orator, therefore, it is a ready-made formula which should be fully exploited for the purpose of engendering a readiness for international collaboration.

In a general sort of way, we can grasp the federal idea as a response of the mind to the political problem of the one and the many—of the need for achieving both unity and diversity, order and liberty, centralization and autonomy—in the composing of human affairs. Nevertheless, there is need for a critical examination of "federation" as a political principle or system, of the circumstances out of which federations have arisen and can arise, and of the conditions of their successful operation. In these few pages, an attempt will be made to indicate a few types of theoretical and historical investigation which may, it is hoped, prove stimulating in the quest for understanding.

Analysis of the basis of federation is impeded, at the outset, by the apparent ambiguity of the concept. The common elements in the political structures of the United States, Canada, Australia, Switzerland, South Africa, the Germany of Bismarck and of the Weimar Republic, are extremely elusive. General usage sanctions application of the term "federal" to their governmental forms, but some opposition is raised to the inclusion of some of the inter-city associations of the Hellenic world, or the present U.S.S.R., or the Argentine, Venezuela, and several other Latin-American republics. Etymology is even more confusing, since the Latin *foedus* conveys a sense much less extensive than normally covered today by "federation." An examination of authorities shows a studied evasion of sharp definition, and much elaboration of qualifications, exceptions, and variations.

But political scientists are never unduly dismayed at having to talk about something the meaning of which no two can agree on. Most of the general concepts with which they have to deal are no less fluid in their textual composition. Here, however, one may resort to the logical device of conceptual extremities linked by continuous gradations. At one end of an imaginary line may be posited the idea of an absolute, unitary world-state, and at the other the conception of complete anarchy—a number of disconnected units in a condition akin to Hobbes' fictional state of nature. The extremities are always conceptual, never actual, and any given period

of international relations may be charted somewhere between, along a sliding scale. Starting from the state of anarchy, one imagines, in succession along the line, a nebulous international law, the development of voluntary institutions and procedures, then a confederation, next a federation, and on and on, and finally, the emerging condition of a world-state. No sharp line separates one from the other—for instance, a confederation from a federation—but rather twilight shadings to confound the pedant. (Indeed, one may expand the conceptual structure into a two-dimensional form to introduce other notions varying from an absolute master-slave relationship to absolute equality, but, for the moment, there is need for simplicity rather than complexity.)

At the exact center of this conceptual series may be placed the pure idea of federation—a perfect balance or compromise between the extremes: a form of political organization which represents a compounding of separate units in such a manner that a central authority prevails in the sphere of common concern, and the several autonomous authorities in the sphere of partial concern. At some indefinite point moving off to the one side of this conceptual pivot, the central authority would become so powerful and extensive that the individual parts would become subordinate, and a unitary form of government would develop; equally, in the other direction, the point would be reached where the central power would cease to exercise an independent will and become a mere servant of the local governments, and thereupon federation would fade into a confederation or a league. Without laboring verbal distinctions, it must be repeated that the essential feature of federation is the existence of two focal areas of political will—the central which controls the aggregate of individuals in their entirety, and the several local ones which govern autonomously in their respective territorial sub-divisions. Behind both must exist a constitutional understanding defining the spheres of authority.

But, it may be asked, is not all this mere pedantry? Of what avail is such an exercise in political logic for the liberal-democratic planners of a new world order? Do we not, in the practical world of political action, tend to create first, and let the academicians legitimatize the offspring with an appropriate name afterwards? Without denying the practice, one may still question its social desirability. Much would be gained even if a clear comprehension of the essential nature of federation should lead to a total rejection of the idea in thinking about international reconstruction. We should then be better equipped for planning a more realistic alternative.

So much for definition. Now, federation may develop as a result either from a centrifugal political force—the breaking down of a unitary form of government; or from centripetal action—the building up of parts into a new entity. The former is obviously of no value in the quest for light on international relations, and it is to the latter that we turn. Here arise two

fundamental questions: (1) What are the propulsions making for centripetal action leading to federation?, and (2) what are the conditions upon which an effective federation can be maintained?

The most important forces of a political, or psychological, order which serve as efficient agents in the creation of federation are fear, a calculated expectation of advantage, and a response to some unifying ideal or myth. Of these three, the most important motivation is probably fear. Fear may develop from direct attempts at intimidation, or from a sustained and profound feeling of insecurity. Intimidation, shading into actual coercion, may be undertaken by a strong political unit seeking to obtain the adherence of weaker units under a nominal federal form. The term is too strong to apply to the methods by which overwhelmingly predominant Prussia initiated, first, the North German Confederation of 1867, and second, the Empire of 1871; but the smaller states of Germany were thoroughly aware of Bismarck's indomitable purpose to achieve union no matter what the cost. "A more extensive union of the majority of Germans," said he in 1868, "could be obtained only by force—or else if common danger should arouse them to fury." The former alternative did not become necessary, since the latter intervened. The method of intimidation of the weak by the strong is not recommended to the architects of international federation, but in extreme cases it may present the only feasible alternative if union be deemed a supreme necessity.

A sustained and profound sense of insecurity has proved a most efficient agent for social and political integration, and advocates of international federation do well to recognize that fact. The insecurity may be political—the fear of invasion, war, or rebellion; or economic and financial —the fear of panic and starvation. Financial fears contributed to the successful efforts of the Philadelphia Convention of 1787; and political danger (encountered in the Franco-Prussian War) to the Empire of 1871. Where the danger is visualized as concrete and external to the federating groups, its integrating power is far greater than if the menace is conceived abstractly as some indeterminate aggression within the projected association. Unity, in other words, is cemented by specific, external opposition. Thereby is indicated an inherent weakness in any plan to establish universal federation all at one stroke. All that it can promise is the curbing of some unnamed political enemy within. If that enemy be clearly indicated, why should he unite with the others? If no enemy be clearly indicated, the danger is too remote, contingent, and unpredictable for any to find need to unite.

A possibility remains that the imminent prospect of world-wide economic collapse may prove an effective incentive to union. In facing such disaster, however, the position of some would undoubtedly be stronger than that of others; the fear and hope would be of uneven intensity. The

strong are then disinclined to encumber themselves with the problems of the weak; a partial federation may be facilitated, but a universal union may be far off in realization.

Again, where insecurity is not felt strongly, there is little incentive to undertake more extensive obligations. A firm belief in its ability to take care of its own defense and economic problems has for decades kept the United States in its policy of isolation. In the years already upon us, that confidence has been rudely shaken, and Federal Union advocates have correctly gauged the importance of that fact. Only when isolation comes to be regarded as a greater danger than union, only when it becomes unmistakably evident that confortable existence cannot be maintained through independence, will the impulse to federation become strong enough to be translated into action.

Having said that, only a word is needed with regard to the other possible motivations for the act of federating. A rational calculation of advantage is important and certainly must play a part in the appeal to the practical, hard-headed class of voters. In the United States, the *Federalist* papers stand as eloquent testimony to the utility of this type of approach. Likewise, the desirability of evoking some unifying ideal, symbol, or myth cannot be overlooked. Here the word "federation" itself supplies the need for those long accustomed to its meaning and practice. The idea of an English-speaking unity, or that of a Union of Democracies, might have even greater force. Unfortunately for the leaders of the Pan-European movement, the geographical contiguity has had no electrifying appeal—certainly not as against the deep-rooted divisions on that continent. Since the disappearance of the unity of Christendom, no universal myth has appeared sufficient in power to unite all classes and races of humanity, although some have urged that "peace" or "social justice" might at some distant day supply that force.

It may be said, in summary, that in founding an international federation, the propulsions of political and/or economic insecurity are believed to be absolutely indispensable, and a rational expectation of gain, along with a unifying ideal, of secondary (but nevertheless great) importance.

Even if some overwhelming fear psychosis should provide a propulsion sufficient for the creation of a federal structure, it does not provide a sustaining power over the long haul. For effective operation, the federal union must discover an enduring as well as a generating basis. Some of the problems may be indicated.

First, the parts of the federation must not represent too great a diversity in size, culture, and the level of their political and economic development. Contrast in size is probably of least importance, although one may well argue that the unusual predominance of Prussia undermined the federal structure of Germany. Even in a league, there are disadvantages, as

the example of Athens in the first Athenian League testifies. Internationally, however, the ratio which the population of the United States bears (for instance) to New Zealand is not as great as that of the state of New York to that of Nevada. Sharp differences in the levels of culture and of economic and political development are another matter. The project for European union has to contend with the difficult problem of linking together in common life on a basis of equality the undeveloped peoples of southeastern Europe with the advanced communities of the northwestern part of the continent. And international federation (whatever its constituency) would certainly have to maintain a superordinate trusteeship over most of Africa and part of Asia, at the least—all sentimentalism to the contrary. So far as this factor is concerned, the proposal for the Federal Union of the Democracies has an undisputed advantage over other projects.

Second, geographical contiguity is unquestionably desirable. All existing national federations possess such contiguity, and it is a most compelling argument for European and other continental unions. Part of its advantage has to do with compactness for defense purposes, part for the similarity of internal problems, and part for the practicability of legislative assemblage and administrative controls. The plan for the union of America and the British Commonwealth raises defense problems of sea power, which are not insoluble. Such a union could not possess an effective land force on the continents of Europe and Asia, and should only be extended to include countries in those regions which can find a means of continental defense. Common assemblage in a union parliament and the establishment of some central administrative control present problems far more difficult for the British-American plan than for a continental federation. It is too much to say that geographical obstacles render such a plan unworkable, but they suggest that the degree of federal unification and power cannot be too extensive.

Third, unifying forces of a spiritual, emotional, or ideological character not only contribute to the formation of union but give it sustenance and vigor in its struggle for survival. While useful at the time of emergence of union, their strength may be increased through the slow crucible of common experience—governmental, administrative, social, economic, and intellectual. Thus the myths of the American Union have grown slowly over a century and a half, and the fusion of the parts of the Union has been a correspondingly gradual process.

Finally, we must consider the problem of the sources from which the central government of a federation may derive its power. There is no true federation, it will be remembered, unless the central authority possesses a power of decision and action independent of the wills of the separate governments. Briand's plan for European Union, involving a sort of coun-

cil of governmental delegates acting under instructions from home, was certainly not a federal conception. One of the most widespread misconceptions about international federation is that it may result from, or be sustained by, a simple abdication of sovereignty on the part of independent governments. In the first place, national governments cannot, and will not, transfer their sovereignty to an agency which is only defined on paper. In the second place, if the power of the central organs emanates solely from such authority as each governmental subdivision grants, then that central will is subordinate to the separate wills—at least in their aggregate. Even though majority procedures be substituted for those of unanimity, a dissentient minority could withdraw or terminate its contribution of men, money, materials, and other instruments of power at any time. The inherent weakness of a league or confederation would not have been overcome.

The government of a federation must, therefore, develop its power from sources (at least in part) independent of the national governments. The bases of power in this connection are three-fold: political (or representative), financial, and military. Policy-making officials of the central government must (at least in part) be chosen by direct or indirect election. There can be no such thing as a federation which includes totalitarian régimes denying free political action. The American Constitution recognized the necessity for instituting direct and indirect elections instead of appointments by the executive power of the several state governments. Bismarck's decision to advocate a national German parliament elected by universal franchise resulted from his clear recognition of the need for generating a political force strong enough to override state particularism. The development of political parties across state frontier lines is thus facilitated, and this development in turn provides a new unifying basis for the federation. Again, the proposal for a Federal Union of the Democracies has seized hold of an essential attribute of federation. There can be a real federation only where domestic conditions permit the organization of people in their private capacities, the holding of free elections, and the maintenance of representative institutions. Only thus could an independent basis for the power of the federation's central government be obtained.

The second basis of power is financial, and that also must come from the people through the power of direct taxation, rather than through the device of levies upon state governments.

Given financial independence, the third basis—military power—can also be found in the people through direct recruitment and organization of personnel. Moreover, the central government must, through this independent force, maintain a military monopoly. It should be noted again at this point that the implications of the "Streit plan" differ sharply from

those of continental or world federation. Democratic Union advocates do not conceive the military function as that primarily of preventing civil war, but of consolidating forces for defense against some enemy without. European, or world, federation, on the other hand, is generally thought of as a device for curbing some aggressor within the association. It should be unmistakably clear that the union of democracies on this score faces an easier task because of its greater cohesion.

The foregoing observations were not prepared as a brief for or against any particular project for international organization. Their purpose is simply to suggest the need for a more thoroughgoing analysis of a concept which has been so frequently and loosely employed in the literature of liberal-democratic world planning. All of this speculation will, of course, have been utterly futile if the Axis triumphs, since no opportunity will be provided for the free association of peoples. In the event of British (or, it may be, an Anglo-American) victory, at least a strong probability exists that the federal idea, or some diluted form thereof, will receive favorable attention in the task of political reconstruction. In terms of practical politics, the constitutional crystallization of such a union might follow, rather than precede, the slow *ad hoc* development of a number of specific institutional arrangements performing a variety of functions.

In the light of the foregoing analysis, certain propositions dimly emerge: (1) A universal federation, in any approximate use of the term, is merely a distant dream. This does not rule out a universal "league." (2) The concept of European (regional) federation suggests the existence of greater politico-psychological obstacles than could be overcome within any reasonable period following the present war. (3) The idea of a Federal Union of the Democracies, based at the outset on the participation of the United States and the members of the British Commonwealth, is intrinsically sound when tested by a number of the above principles.

No attempt has been made to examine the Streit or similar plans in terms of their relative desirability. Likewise, the feasibility of creation as well as of operation has been considered on a restricted rather than on a comprehensive basis. It is submitted, however, that the Streit proposal deserves a more careful analysis and evaluation at the hands of political scientists than it has hitherto received.

The state of the world in 1941 is sufficient excuse for a confessional postscript. I do not deny that the relationships between a limited democratic federation and the rest of the world must for a long time be based to a considerable extent on power—and the power of the federation must be made superior. I see no way to avoid that conclusion. In any ordered world, there must be power to maintain it. If that power cannot be generated from sources equally distributed all over the world, it must, and indeed will, be found somewhere. I should prefer that it arise from those people

who, not because of any inherent racial qualities, but because of the state of their political development, are more likely than any other political group in the world today to exercise that power in a moral manner. The human world is made up of refractory, not plastic, materials. It cannot be made over in a day, or in decades. The demands of the machine age make the elimination of periodic war imperative; power is necessary (though not sufficient) to that end; and it is "we or they" who will wield that power. If the ultimate power be held by those societies in which moral and humanitarian forces are allowed to develop and operate unimpeded, therein lies the best chance (among present alternatives) for brutish power to be transmuted swiftly into "moral" power.

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Hegemony and International Law. In the titanic struggle for leadership in Europe, Great Britain is resisting the most formidable challenge to her supremacy. For centuries, her principal foreign policy was to prevent any establishment of hegemony over the entire European continent. After the first World War, British statesmen, however, were convinced "that they could no longer bear the burden of regulating world affairs alone. They urged a League of Nations. . . . But national sovereignties were no more prepared to collaborate in a democratic world organization than they had been to submit to British domination. Thus, instead of the League of Nations succeeding to the British imperial hegemony, the world fell into anarchy in a new struggle of several states, each striving to become the dominant Power."[1]

With the avowed purpose of establishing a "New Order," Adolf Hitler, under the aegis of the *Lebensraum*[2] theory, the "cardinal point in National Socialist foreign policy,"[3] has succeeded, at least for the time being, in establishing control over most of the continent of Europe. When France

[1] Quincy Wright, "The Present Status of Neutrality," *American Journal of International Law*, July, 1940, pp. 414–415. See also Frederick L. Schuman, *Europe on the Eve* (New York, 1939); *ibid.*, *Night over Europe; The Diplomacy of Nemesis, 1939–1940* (New York, 1941); Edward Mousley, *Man or Leviathan?* (London, 1939); Edward H. Carr, *The Twenty Years' Crisis* (London, 1940); and Paul Birdsall, *Versailles Twenty Years After* (New York, 1941).

[2] See my article, "Germany's *Lebensraum*," in this REVIEW, Oct., 1940, pp. 964–975. Cf. René Cassin, "Que subsiste-t-il du droit international?," *Revue des Questions de Défense Nationale*, Jan., 1940, p. 68: "Depuis quelque temps, l'espace vital (*Lebensraum*) a été presenté par Hitler comme sa plate-forme de politique extérieure." Carl Schmitt, "Raum und Grossraum im Völkerrecht," *Zeitschrift für Völkerrecht*, Vol. 24, No. 2, 1940.

[3] E. Muller-Sturmheim, "From Kant to Hitler," *Quarterly Review* (London), Jan., 1941, p. 84. See also Adolf Hitler's order to the German army on April 6,

collapsed in June, 1940, Nazi Germany celebrated the destruction of France's "dream of hegemony over the European continent"[4] and urged her to "collaborate" in the establishment of the "New Order." Subsequently, the new Chief of State, Marshal Pétain, declared that "we can articulate our thought and our action with those which tomorrow will preside over the reorganization of the world."[5]

We are in the midst of one of the most troubled periods of the world's history, when events are moving with rapidly increasing speed towards some great climax in which the composition and alignment of nations may alter. "While it is hard to distinguish between a war emergency arrangement and plans for permanent reorganization, it seems likely that Hitler's political purpose is to create a German *Lebensraum* by driving the Bolshevik régime into Asia. . . . "[6] The theater of war may subsequently spread beyond the Black Sea and the Mediterranean realm. The Axis Powers contend that dominance in the Mediterranean depends upon power relations on the European continent and argue that history proves that it never was possible to form a European unity without inclusion of the Mediterranean realm. The Roman Empire finally collapsed because its power bases in the Mediterranean were not sufficiently strong to uphold the process of increasing continentalization. The Mediaeval Empire was not completed and Napoleon's attempt to establish a hegemony over Europe failed because they were deprived of dominating the Mediterranean. The reconstruction of Europe on its own, and on a permanent, basis is therefore realizable only if disturbances from the Mediterranean are no longer to be feared.[7]

"The world's experience with violence and with consent has been a very long one. History and literature are filled with examples of both and of elaborate and well-wrought reasoning about both."[8] A new phase in the fierce struggle of the Great Powers was opened with the historic meeting between President Roosevelt and Prime Minister Churchill on the high seas early in August, 1941. "If the Declaration of the Atlantic, released to the world on August 14, 1941, is taken merely as a restatement of the

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1941, "to march into Yugoslavia and Greece in order to secure a 'living space' for the German family."

[4] J. v. Essen, "Frankreich's kontinentaler Hegemonietraum," *Vergangenheit und Gegenwart* (Leipzig), Vol. 30, No. 4, 1940.

[5] "Marshal Pétain and the 'New Order'," *Foreign Affairs*, Apr., 1941, p. 673.

[6] Bruce Hopper, "The War for Eastern Europe," *ibid.*, Oct. 1941, p. 23.

[7] Albert Prinzing, "Die europäische Bedeutung des Mittelmeers," *Zeitschrift für Politik*, Jan., 1941, pp. 33–46.

[8] Charles E. Merriam, *Prologue to Politics* (Chicago, 1939), p. 1. The appendix to this book (pp. 101–108) contains bibliographies and suggestive lines of research and exposition. See also Robert C. Brooks, "Reflections on the 'World Revolution' of 1940," in this Review, Feb., 1941, pp. 1–28.

democratic faith in international relationships, nine-tenths of its significance will be lost. . . . The Declaration marks, in effect, the assumption by the two great English-speaking democracies of the leadership of the free world."[9] The formulation of the Eight Points, by sealing the solemn engagement of England and the United States to continue their efforts until the 'destruction of the Nazi tyranny' is achieved, marks the transition to a moral, political, and industrial offensive. . . . In the Far East, Japan is at least being treated as an aggressor whose next move will be met by force."[10] "It has become one of the major assumptions in world politics that no Great Power is to be permitted to establish hegemony over China, and therefore, by a kind of political gravitation, over all Eastern Asia, without resistance by the other Great Powers—that is, unless the others are immobilized by struggles in another area or otherwise rendered impotent."[11]

Accepting the challenge expressed in the communiqué announcing the Hitler-Mussolini meeting on the Russian border on August 29, 1941, to the effect that "destruction of the Bolshevist danger and of plutocratic exploitation will create the possibility of peaceful, harmonious, and profitable coöperation of all peoples of the European continent in the political as well as in the economic and cultural spheres," Foreign Secretary Anthony Eden declared in a speech to munitions workers at Coventry on August 30, 1941, that the Roosevelt-Churchill eight-point Atlantic formula in contrast "establishes principles which will be equally valid for all nations" and "excludes all idea of hegemony or zone leadership in the east or west."

The results from this prolonged struggle cannot be foreseen with confidence, and the post-war world will be confronted with a variety of complex dilemmas.[12] A number of plans for "world order" after the war have been suggested, and additional plans will be submitted in due course, widely divergent in their approaches.[13] Besides the partition of the earth

[9] Geoffrey Crowther, "Anglo-American Pitfalls," *Foreign Affairs*, Oct., 1941, p. 1. [10] Quoted from editorial in *Free World*, Vol. I, No. 1, Oct., 1941.

[11] Nathaniel Peffer, "Omens in the Far East," *Foreign Affairs*, Oct. 1941, p. 50.

[12] Quincy Wright, "Dilemmas for a Post-War World," *Free World*, Oct., 1941, pp. 14–16.

[13] Among others, see William P. Maddox (ed.), *European Plans for World Order* (Philadelphia, American Academy of Political and Social Science, 1940); "When War Ends," *Annals of American Academy of Political and Social Science*, July, 1940; Helen Hill and Herbert Agar, *Beyond German Victory* (New York, 1940); Jackson H. Ralston, *A Quest for International Order* (Washington, D. C., 1941); *German "New Order" in Europe*, Bulletin of International News, Jan. 25, 1941; Vera Micheles Dean, "Plans for Post War Reconstruction," *Foreign Policy Reports*, May, 15, 1941; Friedrich Stiewe, "Um die Zukunft Europas," *Berliner Monatshefte*, Jan., 1941; Sidney B. Fay, "Problems of Peace Settlement," *Events*, Apr., May, June, 1941.

among a small number of very large states or vast empires, there are still other great tendencies circulating in this world of struggling nations. The classical conception of the "balance of power," while described as inadequate and burdensome to maintain,[14] or doomed to vanish as an unreality, is not yet entirely abandoned and may again become the overriding regulative force in international society. The "direct universalist" conception, inspired by the Pact of the League of Nations in 1919, for practical purposes may have ceased to exist, but some people still see the realization of our hopes in a revived and strengthened League of Nations. Attempts at concerted, superstate action in any scheme of federation[15] may be classified as an "organic" conception and in time may materialize.

At a moment when a clash among rival claims for leadership was impending, Heinrich Triepel, eminent German professor emeritus of law, well known to international lawyers through his classical treatise *Völkerrecht und Landesrecht* (1899), published his monumental *Die Hegemonie.*[16] "At the outset, there are two ways to reëstablish a social unity which has gone to pieces," asserts Triepel. The one consists in the establishment or the reëstablishment of a universal dominance over the entirety, the other in the federation of the separated parts. When its existence was threatened by a general dissolution, the Catholic Church followed the first-mentioned procedure and gradually overcame church federalism in favor of the ecclesiastical universal dominance of the papacy. The secularized community of states, however, had departed from achieving universal dominance and every attempt to reëstablish it was suppressed. However, in every century, the temporal conciliation led to new attempts toward creating a European federation. This is evident not only from certain proposed plans, but from the sessions of the large congresses, beginning with the Westphalian peace congress, to the establishment of the League of Nations. But experience proved that all these enterprises merely created temporary and incomplete effects. As a third and last way, observes Triepel, in order to supplement by a political one, the never lost unity of Europe, culturally enhanced through the spiritual movements of modern

[14] "Commission to Study the Organization of Peace," *Preliminary Report*, Nov., 1940, p. 9. See also comments thereon in this REVIEW, Apr., 1941, pp. 317–324.

[15] For instance, Clarence Streit's remarkable books *Union Now* (1939) and *Union Now with England* (1941) put leaven into human thinking in the Anglo-Saxon world. See also Lord Davies, *A Federated Europe* (London, 1940). A proposal for a "confederation," not as close or as centralized as "Union Now" and including all states which accept the Western tradition of rule by law. The organic concepts expressed by the Holy See may be found in the papal encyclical of June 1, 1941.

[16] Heinrich Triepel, *Die Hegemonie; Ein Buch von führenden Staaten* (Stuttgart und Berlin: W. Kohlhammer Verlag, 1938). The volume combines in a unique manner sociological and historical approach with analytical jurisprudence. Since it is the principal work on its subject, revealing hegemony as a universal phenomenon, the writer is drawing extensively from it.

times, there remained only the way of hegemony; that is to say, hegemony by a single or several European states.[17]

While in *Völkerrecht und Landesrecht* Triepel defined sharply the dualist theory of the relation of international law and municipal law, in *Die Hegemonie* he formulates a rather broad and descriptive interpretation of the term "hegemony,"[18] supported by detailed and well-documented historical illustrations taken from the main periods of world-history. This fundamental concept has received, until now, only occasional and fragmentary consideration,[19] and Triepel remarks (p. 296) that much damage has been done to the teaching of hegemony because in treating the entire complex of questions involved it will be found that "hegemony" is usually confused with such terms as "dominance," "primacy," "supremacy," "superiority," or "preponderance."[20] Terms like "supremacy" or "primacy" are not suitable in describing adequately the nature of "hegemony." They are only a conception of relation, or of comparison, and do not describe the kind of relations with other states, especially not the existing relation of leadership. In the eyes of Triepel, the United States, for example, enjoys primacy in America, but so far has not created a recognized hegemony over the entire American world.[21]

Power is a necessary ingredient of every political order, and the struggle for power forms the principal content of all political history.[22] In the world of international life, the scale of power comprises a considerable number of steps. Viewed from the standpoint of those subjugated by power, there are infinite varying grades of dependence.[23] The scale starts with mere in-

[17] *Ibid.*, p. 294.

[18] "Triepel's book proves to what extent such a broadly stated frame of description may be useful." Comment in *Zeitschrift für Politik*, June–July, 1940, pp. 325–326.

[19] The so-called general theory of the state should have included "hegemony" within its field of researches. Neither in general books on the theory of the state or on general public law or political science, nor in monographs on international relations, can anything suitable be found. In most of these works, the word "hegemony" is not even mentioned. There appears to be one exception: Rehm, *Allgemeine Staatslehre* (1899). But this discussion is not very exhaustive. Little, if anything, will be found on the subject in books on international law, except in chapters relating to the "equality" of states. See, for instance, L. Oppenheim-Lauterpacht, *International Law*, 5th ed., Vol. 1 (New York, 1937), p. 221.

[20] In the more recent literature, the word "hegemony" is correctly replaced by "preponderance" or similar expressions, if it is not concerned with genuine leadership.

[21] Triepel, *op. cit.*, p. 138.

[22] See F. v. Wieser, *Gesetz der Macht* (Wien, 1926); Charles E. Merriam, *Political Power; Its Composition and Incidence* (New York, 1934); Bertrand Russell, *Power; A New Social Analysis* (New York, 1938); James Burnham, *The Managerial Revolution; What is Happening in the World* (New York, 1941).

[23] For interesting schedules, showing the variety of dependence, Hans Gmelin, *Politische Abhängigkeit von Staaten* (Sonderabdruck aus der Festgabe für Richard Schmidt, 1932); Josef L. Kunz, *Staatenverbindungen* (Stuttgart, 1929).

fluence and finishes with dominance. The whole of international life oscillates between these two points. This oscillation, says Triepel, forms the content of all history.

Inequalities of condition or status have always played an important part in international relations.[24] "The multiplication of international contacts and the development of international organization have been accompanied by an increase in the complexity of national constitutions and a steady expansion of the family of nations from the original Christian states of Europe to parts of the world governed by political bodies of widely different conceptions, traditions, and methods. Instead of the simple unitary states of the seventeenth and eighteenth centuries, with authority and responsibility vested in an individual or readily definable body of individuals, there are today Oriental, African, American, as well as European, varieties of federations, confederations, empires, protectorates, suzerainties, commonwealths, unions, and leagues of nations, some of which may be as readily classed with international organizations as with states. Apart from these varying degrees of unity and autonomy of political entities, which may or may not be within a single "state," the powers of government within each entity have often been limited or distributed among a variety of organs by relatively permanent constitutions or customs, thus establishing practical if not legal variations in international capacities. Thus instead of a world of equal, territorially defined, sovereign states, we have a world of political entities displaying a tropical luxuriance of political and legal organization, competence, and status."[25]

Triepel finds that a colorful multitude of causes confront us when we endeavor to define the genesis of hegemonical relations. Each of these relations possesses its individual characteristic and should be examined individually, not only according to its formal or material basis, but also according to the intensity and formation of the relationship. Frequently the foundation of a hegemony is not incorporated in one, but in several, historical causes, and not only in one, but in several simultaneously effective motives. Numerical differences in size, and cultural, military, and economic superiority, are among the different causes unfolding the power of a state. Power exercised over states, continues Triepel, cannot descend farther than dominance, because every additional step would absolutely ruin the personality of the subdued. Alternately, there is no dependence of a state which does not at least exist by influence through some other state. To gain genuine dominance over other states is a relatively rare case of luck, provided the victor can consider it luck at all. No state is ex-

[24] E. D. Dickinson, *The Equality of States in International Law* (Cambridge, 1920), Chaps. VI, VII, VIII.

[25] Quincy Wright, *Mandates Under the League of Nations* (Chicago, 1930), p. 276.

empt from the binding of its will through the influence of a foreign state; it also does not enjoy a total autarchy in the sense of the political ideal of the Greeks.

Like every leadership, declares Triepel, state hegemony is located in the middle (or let us be more precise and say approximately in the middle, because ascending as well as declining trends will be observed) between mere influence and dominance. Degrees of power, continues Triepel, are difficult to measure with a yardstick, and therefore the statement that hegemony may be allocated between these two limitations must suffice. Every state may be at any time subject to foreign influences and may be influenced from different directions. On the other hand, a powerful state can develop simultaneously, also within the same geographical area, influence in one, hegemony over another, state. For instance, in a number of Latin-American countries, the United States has exercised mere influence, in others genuine hegemony.[26] Hegemony is naturally also influence, but not the every-day influence with which every state is confronted. It prevails in the "predominant and decisive influence," as was adjudged to Russia in the German-Russian treaty of June 18, 1887, in regard to Bulgaria and Eastern Rumelia.[27] In contrast to mere influence, dominance demonstrates the ability of a will to motivate other wills by forecasting application of external force. If the subdued state makes efforts to withdraw from its subjugation, it performs an act of secession or rebellion. Sufficient historical evidence has been adduced to show that hegemony has always been based upon recognition by the "led" state, and that it approached its end as soon as such recognition began to vacillate.[28] In summary, it may be said that genuine leadership is less than domination, but more than mere influence. It is energetic power exercised over the will of another, but controlled by self-restraint of the leading state, which must enjoy the voluntary support of its following. There is no hegemony without following, emphasizes Triepel.

Ambition for power, primarily that for political power, is usually accompanied by a desire to have such power recognized, not only morally, but also legally. However, it should be made clear that legalization creates only possibilities and no certainties. Nevertheless, legalized leadership plays the predominant rôle in all stages of social life. Every leader must constantly calculate upon competition and upon attempts by others to gain leadership. It is a "regular struggle for hegemony."[29] Hence the leading state will make efforts to seek confirmation or support of its leadership by some kind of legal acknowledgment. Will to power in political affairs is

[26] Both of these descriptions are well separated by Alejandro Alvarez, *Le Panaméricanism et la dixième Conférence panaméricaine* (1928), p. 46 *et seq.*

[27] F. de Martens, *Nouveau Recueil Général*, 3. série, Vol. X, p. 37.

[28] Triepel, *op. cit.*, p. 140. [29] Ibid., *op. cit.*, p. 47 *et seq.*

also will to formulate a legal condition, because the continuation of power is protected against the competition of a third state only through the creation of such a condition. If such a will of the state seeking or exercising hegemony is confirmed in a formal manner, then, says Triepel, we are concerned with a legal or institutional hegemony. Legalization of a hegemony can take place also within a larger framework. A very characteristic demonstration of hegemony of the Great Powers may be found in the constitution of the League of Nations. It is the first case in which a "legal basis" was provided for a political hegemony of those Powers.[30]

Hegemonies may be legalized by treaties, agreements, laws, or statutes. Some countries even resort to constitutional confirmations when establishing hegemony. They induce the follower state to recognize as effective and binding certain instruments pertaining to hegemonical leadership, thus strengthening the status of hegemony. The most outstanding example of fostering hegemony by constitutional law, anticipating intervention by the follower state, was Napoleon's issuance of the Swiss Act of Mediation in 1803. He dictated a constitution for Switzerland and made any change dependent upon his will and decision. The United States also made efforts to strengthen its hegemony over Cuba, Panama, and the Philippines by constitutional acknowledgments.[31]

In addition to the legalized hegemony, there exists the "actual" or so-called "factual" hegemony. This type of hegemony is rarely mentioned in any literature, apparently because writers prefer to discuss legal or institutional dependencies. As to this type of hegemony, it may be said "that in all power or cultural movements, the motive powers of social organisms act beyond the law and perform their most powerful actions independently of law, and even contrary to law."[32] Triepel contends that the factual hegemony is as genuine as the legalized, at times even more genuine. A hegemony is genuine if it combines leadership with the confidence of the followers. Factual hegemony may be observed throughout the history of mankind. The best illustration is the hegemony of the Great

[30] L. Oppenheim-Lauterpacht, *op. cit.*, pp. 224–226: "The end of the World War found Germany and Austria-Hungary defeated and the latter dismembered. Russia had undergone far-reaching internal changes and had, at that time, adopted a new international outlook. The importance of the remaining five, who are described in the Treaties of Peace as the 'Principal Allied and Associated Powers,' was recognized by Article 4 of the Covenant of the League in the composition of the Council, whereon Great Britain, France, Italy, and Japan (the United States having abstained from joining the League) acquired permanent seats. Thus the political hegemony of the Great Powers was, for the first time, given a legal basis and expression in the most international instrument." In the former editions of this treatise, the view was expressed that the Covenant had not altered the law in this respect.

[31] Triepel, *op. cit.*, p. 204.

[32] Otto v. Gierke, *Das Wesen der menschlichen Verbände* (1902), p. 33.

Powers within the European state system, coupled with the beginning of a hegemony of "world powers" within the entire community of nations. The question arises whether or not this "collective" hegemony should be considered a legal or an extra-legal appearance. Some authors have described it as a component part of European international law, or, at least, the most important contribution toward forming a European organization.[33] While the statutes of the League of Nations assured the Great Powers a certain primacy, events have proved that the initiated legalization of this hegemony was not entirely successful.[34]

Legalization was deferred on account of internal deficiencies to which every collective hegemony is subjected, and owing to the lack of the first supposition upon which every formulation of law, even common law, is based, that is, the existence of a *communis opinio* among the members of the association. The venture was doomed to failure also because the majority of European states did not feel inclined to discard the maxim of legal equality of all individual states. As long as they adhere to this maxim, ventures Triepel, it will form an obstacle to a legalization of any hegemony considered in conflict with it, even if such hegemony is created by the Great Powers. The existence of this "collective" hegemony cannot be denied, but it was merely a factual one.[35]

It would be difficult to prepare a list showing "legalized" and "factual" hegemonies, and to indicate definitely when the one type or the other may preferably occur in international relations. As a whole, the history of state hegemonies produces sufficient evidence that every genuine leadership is independent of legal stipulations. Neither a law nor a treaty can produce a hegemony. A hegemony, according to Triepel, which is merely written on a piece of paper and is not based upon the strength of initiative of the leading state, and upon the political capability to lead, is mere fantasy. Just as a legalization may contribute to the establishment of hegemony, it also may prevent the same. In the most absolute form, hegemony over a third state is hindered when the contracting parties agree to destroy the state and partition it. The partitions of Poland are the most outstanding examples of such politics in world history.[36] Triepel attempts to prophesy that a genuine hegemony will gradually spread over all the Western hemisphere under the leadership of the United States, not-

[33] John Westlake, *International Law*, Vol. I (Cambridge, 1904), p. 308 *et seq.*; *ibid.*, *Collected Papers* (Cambridge, 1914), p. 99 *et seq.*; especially T. J. Lawrence, *Essays on Some Disputed Questions in Modern International Law* (2nd ed., Cambridge, 1885), p. 208 *et seq.*, principally pp. 227, 230, 232; also, *ibid.*, *Principles of International Law* (7th ed., 1923), p. 245.

[34] Carl Bilfinger, Völkerbundsrecht gegen Völkerrecht (Munich, 1938), p. 10, and Chap. V, "Garantie des Status quo durch Hegemonie und Sanktionen"; also G. W. Keeton and G. Schwarzenberger, *Making International Law Work* (London, 1939).

[35] Triepel, *op. cit.*, p. 205. [36] *Ibid.*, *op. cit.*, pp. 206–208.

withstanding all anti-hegemonical declarations advanced during the last Pan-American conferences.

In the summer of 1940, the principles laid down in the Monroe message of 1823 were approved by the virtually unanimous vote of both houses of Congress. In connection with this reaffirmation of the Monroe Doctrine, Secretary Cordell Hull declared that it "contains within it not the slightest vestige of any implication, much less assumption, of hegemony on the part of the United States. . . ."[37] "The principles are at the heart of our creed with regard to foreign policy. There are few subjects, therefore, in American diplomatic history that have so great an importance attested by the immense bibliography of the subject which today exists. There are few which have so great a contemporary significance. The course of events in Europe, the appearance of a new philosophy, perhaps a conquering philosophy, alien to the thought and the interests of the New World, have large implications in terms of the message of 1823. The declaration of President Roosevelt with regard to Canada, the acquisition of new bases in the Caribbean, the conference of Havana to consider the problem of the French and Dutch colonies in this hemisphere, the statement of Herr von Ribbentrop that the United States under the Monroe Doctrine must keep out of Europe if it wishes Europe to keep out of America, all suggest the living interest and the necessity of understanding the full import of the principles laid down by Monroe."[38] "On nothing in the field of foreign policy have the American people been clearer than in their desire to preserve this continent from the aggressions of European powers. . . . The installation of an aggressive foreign power on this side of the Atlantic would be no very lovely thing for anyone; and whether the danger of such installation be great or small, whether it be grossly exaggerated (as some think) or not, it is today present in many minds, and exercises a natural influence toward American solidarity and in the direction of united action for the protection of the safety of the New World."[39]

Triepel sheds new light on the "balance of power" and the principle of "equality of states" as potential legal barriers to the establishment of hegemony. He claims that "an attempt to challenge legally the formation of factual hegemonies would gain strong support if based on the view that rules of general law exist which are more or less opposed to any hegemony. "If such is the case," he continues, "every aspiration for hegemony would be legally prohibited and the establishment of every genuine hegemony

[37] *Department of State Bulletin*, Vol. III, No. 54 (July, 6, 1940); also "The Monroe Doctrine in 1940," *American Journal of International Law*, Oct., 1940.

[38] Dexter Perkins, *Hands Off; A History of the Monroe Doctrine* (Boston, 1941), foreword.

[39] *Ibid.*, pp. 376–379. See also Hanson W. Baldwin, *United We Stand; Defense of the Western Hemisphere* (New York, 1941).

would be considered a crime in the eyes of international law."[40] Whether or not international law actually takes this position requires closer scrutiny.

The conceptions of the so-called "balance of power" and the "legal equality" of states are frequently confused, but should be sharply distinguished. According to Triepel, "balance" means equality of external power, while "legal equality" means equality in possession of rights and in the opportunity of exercising such rights. The demand for legal equality within a community can be submitted only if and in so far as the demand for the existence of a balance of power among the members of the association has not been fulfilled. A demand for legal equality therefore means a demand for equality of rights, notwithstanding an inequality of power. Not even within a state does the principle of "equality of all before the law" mean that all are equal in economic and other social power. Triepel remarks that the same applies in regard to the relation of legal equality in international law to the balance among the states.[41]

However, the principle of "balance of power" does not contain the nonsensical demand that *all* states on earth, or even within a continent, should be equal in political power. Some dreamers may have imagined this, but the notion never became a subject of serious political consideration since it appeared for the first time in the European world of ideas, which was during the time when the powers formed the League of Venice against Charles VIII of France.[42] The difference between large and small, strong and weak, nations cannot be effaced; in this respect, the principle of balance of power has a conservative character. It means, according to the classical formulation provided by Gentz, "that never should one of the members of the European society of states advance to such power that the totality of the remaining states cannot overpower it."[43] "The principle does not contain a command for the distribution of available power, but a prohibition of collecting a superpower over all others. The scale does not strike a balance between one and the other, but between the majority and the strongest in existence at a given time. Basically, the principle thus presupposes the existence of Great Powers. The balance is primarily a balance of the Great Powers. This was always the understanding in European politics."[44]

This fact leads Triepel to the statement that the principle of balance excludes hegemony only to a certain extent. It is not excluded in the rela-

[40] Triepel, *op. cit.*, p. 211. [41] *Ibid.*, *op. cit.*, p. 212.

[42] Walter Kienast, *Historische Zeitschrift*, Vol. 153 (Munich, 1936), p. 270 *et seq.*

[43] *Fragmente aus der neuesten Geschichte des politischen Gleichgewichts in Europa* (1806; Staatsschriften und Briefe, by v. Eckardt, 1921), Vol. 1, p. 121. Similar statements occur in Chr. Wolff, *Jus gentium* (1759), par. 644 *et seq.*

[44] Triepel, *op. cit.*, p. 212.

tion between a larger and a smaller state. It is also not contrary to the idea of balance if a great power is allied with one or several minor powers. Triepel even believes that hegemony of one great power over another great power is permissible. He cites only one limitation: "the power of the state, which has been increased by combining with one or more follower states, should not grow to such an extent that the totality of the remaining states is no longer in a position to challenge this state and its followers." Thus hegemony over the entire association of nations is specifically excluded. Viewed from the standpoint of balance, even temporary general hegemonies may be the cause of suspicion. The offer made by Louis XIV to lead combined troops against the Turks caused well-founded suspicion in a number of places. Triepel adds that the principle of balance is only a barrier to the hegemony of a single great power. Since the principle is applicable merely among the Great Powers, it does not form a barrier to a "collective" hegemony of the Great Powers over other powers. On the contrary, says Triepel, "the history of the European 'Pentarchy' proves that the purpose of its formation was to guarantee the balance of the states in that continent."[45]

There is no intention of examining critically the question whether or not the principle of balance has been a blessing or a curse to Europe. The settlement of Munich[46] and its aftermath are still in the stage of bitter contest. "So perfectly has the balance-of-power principle operated that each contender for supremacy—Charles V, Louis XIV, Napoleon I, and Imperial Germany—has been eventually thwarted and crushed by armed and alert enemies."[47] Much thought has been given to this principle by National Socialist writers in Germany,[48] emphasizing the fact that "the traditional British balance-of-power policy can no longer fulfill its assigned task" and "that it is the secular duty of the armed might of Greater Germany to wipe out forever this British demand for world domination."[49]

Triepel, however, is more interested in determining whether or not the

[45] Triepel, *op. cit.*, p. 213.

[46] Quincy Wright, "The Munich Settlement and International Law," *American Journal of International Law*, Jan., 1939, pp. 12–32.

[47] Frederick L. Schuman, *International Politics* (New York, 1937), p. 724.

[48] Fritz Berber, Prinzipien der Britischen Aussenpolitik (Berlin, 1939), p. 31; W. G. Grewe, "Das Gleichgewichtsprinzip in der Britischen Völkerrechts- und Aussenpolitik," *Monatshefte fur Auswärtige Politik*, Feb., 1939; Walter Bargatzki, *Der Sinn der englischen Festlandspolitik* (Munich, 1939); Erich Feldmann, "Das europäische Gleichgewicht," *Deutschlands Erneuerung*, Oct., 1940; Gerhart Jentsch, *Das Ende des europäischen Gleichgewichts* (Berlin, 1940); Ernst Wolgast, "Über die Gesetze der auswärtigen Politik und die Machtauffassung der Staaten," *Zeitschrift fur öffentl. Recht.* Vol. XX, No. 3, 1940.

[49] Friedrich Klein, "England und der Grundsatz des politischen Mächtegleichgewichts," *Wissen und Wehr*, Aug., 1940, pp. 289–299. This article contains lengthy citations from Triepel's *Die Hegemonie.*

balance-of-power principle is a barrier to the formation of hegemony. This, he admits, cannot be denied to the extent mentioned above. Occasionally it is also said that it constitutes a legal principle inimical to hegemony.[50] Eliminating all speculation as to natural law, Triepel expresses the opinion that the principle cannot be considered as "general" international law,[51] although it may be a valid legal rule applicable to certain parts of the world, principally to Europe,[52] or to parts thereof.[53] Even this rule could be removed or limited at any time by the free consent of the combined nations. Nobody would venture to say that a union of states comprised of Great Powers and small states is an establishment contrary to international law. It seems customary to state that the principle of balance was "sanctioned" at the big congresses at Münster and Osnabrück, at Utrecht and at Vienna. In reality, however, these significant general acts of European diplomacy were more or less utilized whenever the map of Europe was changed, in order to establish the balance of power as a means for the preservation of peace. Thus, in the Treaty of Utrecht the balance imposed is called a *justum potentiae equilibrium*, and in the Treaty of Chaumont between Austria, Great Britain, and Prussia in 1814 the signatories pledged themselves to oppose France "for the salutary purpose of putting an end to the miseries of Europe" and of "securing its future repose by reëstablishing a 'just balance of power'." Thus Triepel infers that the principle of balance is merely a method according to which one endeavors to fulfill a task of political reorientation and to provide the security of a future peace. It is no demand pronounced in the form of a legal rule. No subjective rights or obligations emanate from it, and "violations" of the principle are no breach of formal international law.

Doubtless it is a political regulatory principle of outstanding magnitude.[54] This is well illustrated in Sir Eyre Crowe's memorandum of 1907

[50] Triepel, *op. cit.*, p. 213, n. 38, cites various authorities for comparative purposes.

[51] Luciano Conti, "Die Stellung der Grossmächte in der internationalen Ordnung," *Monatshefte für Auswärtige Politik*, Apr., 1939, p. 308, asserts that the principle of balance describes primarily a political system, but that it is impossible to deny its close relationship with international law. A similar theory has been advanced previously—for instance, by F. Somló, *Juristische Grundlehren* (1917), but it was subsequently abandoned by modern science. Conti considers the time opportune to revive this theory, as has recently been done in H. Drost, *Grundlagen des Völkerrechts* (Munich, 1936), p. 15 *et seq.*

[52] V. Bruns, *Völkerrecht und Politik* (Berlin, 1934), p. 11, refers to a European legal order.

[53] Reference is occasionally made to the balance in the Balkans, or in Eastern or Central Europe. B. E. Schmitt, *From Versailles to Munich, 1918–1938* (Chicago, 1938), p. 41, states: "The interests of all its [Czechoslovakia's] allies were so obviously bound up with the preservation of the state, as the key to the balance of power in Central Europe, that any defection seemed inconceivable."

[54] Triepel, *op. cit.*, p. 214.

on German foreign policy:[55] "The first interest of all countries is the preservation of national independence. It follows that England, more than any non-insular power, has a direct and positive interest in the maintenance of the independence of nations, and therefore must be the natural enemy of any country threatening the independence of others and the natural protector of the weaker communities. History shows that the danger threatening the independence of this or that nation has generally arisen, at least in part, out of the momentary predominance of a neighboring state at once militarily powerful, economically efficient, and ambitious to extend its frontiers or spread its influence, the danger being directly proportionate to the degree of its power and efficacy and to the spontaneity or 'inevitableness' of its ambitions. The only check on the abuse of political predominance derived from such a position has always consisted in the opposition of an equally formidable rival or of a combination of several countries forming leagues of defense. The equilibrium established by such a grouping of forces is technically known as the balance of power, and it has become almost an historical truism to identify England's secular policy with the maintenance of this balance by throwing her weight now in this scale and now in that, but ever on the side opposed to the political dictatorship of the strongest single state or group at a given time." This memorandum is considered by German National Socialist writers as the "root of all evil" in the present conflicts.[56]

We are confronted with a different problem, explains Triepel, when considering the principle of "legal equality" of states. Here no doubt the reference is to a legal principle generally binding upon the states of the entire society of nations, creating rights and obligations. If by "fundamental rights" is meant especially important principles of general international law, legal equality may be considered one of the "fundamental" rights. It will therefore be necessary to determine correctly the scope of application and the contents of this principle.[57] The demand for "legal equality" of the states stands to reason, as far as legal application within the society of nations is concerned. It provides in substance that the generally valid law must be applied in an equal manner to every state to which it may be applicable. "Equality before the law" is demanded in contrast to "legal equality." This, observes Triepel, is recognized even by some of the English writers,[58] otherwise rather skeptical as to "equality" in international

[55] Keeton-Schwarzenberger, *op. cit.*, p. 35.

[56] Giselher Wirsing, "Die wahre Wurzel des Konflikts," *Das XX. Jahrhundert*, Sept., 1939. [57] Triepel, *op. cit.*, p. 215.

[58] P. J. Baker, "The Doctrine of Legal Equality of States," *British Year Book of International Law, 1923–24*, p. 1. Only a few are stricter in this respect. T. J. Lawrence even assumes a superiority of the Great Powers *before* the law. *Essays*, p. 230; *ibid.*, *Principles*, p. 245.

law. The same situation as to legal equality will be found in municipal law, inserted as an object of fundamental right in modern constitutions. Notwithstanding all disputes as to the juristic significance of constitutional fundamental rights, agreement appears to exist that constitutions guarantee equality to citizens, at least as far as legal application by the courts and administrative offices is concerned. Necessarily so, writes Triepel, because under such circumstances it refers regularly to the subsumption of equal matters of fact under generally formulated legal rules. In international society, however, the legal application usually takes place by the legal persons themselves to whom these rules apply. The states apply the rules, being guided by the applicable rules of international law, when making demands and concessions or when negotiating or abstaining. Thus the principle of equality before the law, according to Triepel, means that the mutual conduct of states must be performed on the basis of general rules of international law, without consideration of political power relations. The powerful state may not demand any more modifications of existing rights from a less powerful state or grant less to such a state than it would concede to a more powerful one. There exists, in fact, complete equality of states in regard to the application of law.[59] This requires respect for frontiers, for the rights of foreigners, for the exterritoriality of legations, and for neutral rights. Equality should be meticulously observed in procedures of arbitration. Speaking generally, Triepel concludes, equality is expressed in such a manner that every state considers every other, even the smallest, equal in its legal personality.[60]

A far different situation exists in respect to equality in legal capacity and power. Triepel points out that one theory, introduced at the end of the eighteenth century under the reign of natural law, with the aid of a wrong analogy from a wrong sentence deduced from the natural equality of all men, and successively adopted from Wolff and Vattel in all textbooks on international law,[61] contends that according to international law, all states are legally equal and that all must possess equal rights. The first statement, Triepel claims, is in open conflict with reality, and if the second were considered correct, all relations pertaining to protectorate, to vassalage, to neutralization, to guarantee, to consular jurisdiction, and to other

[59] James Lorimer, *The Institutes of the Law of Nations*, Vol. I (1883), p. 168: "... the rights of states are equal in themselves, and not merely the right of asserting their rights."

[60] Heilborn, *Das System des Völkerrechts* (1896), p. 305; G. Jellinek, *System der subjektiven öffentlichen Rechte* (1905), p. 319.

[61] The history of the dogma of equality is treated in E. D. Dickinson, *The Equality of States in International Law* (1920), pp. 3–152; Goebel, *The Equality of States* (1923). See also Arnold D. McNair, "Equality in International Law," *Michigan Law Review*, Dec. 1927; Payson S. Wild, "What Is the Trouble with International Law?", in this REVIEW, June, 1938, pp. 478–494.

familiar international institutions would have to be condemned as contrary to international law. Actually, international law grants equality before the law, not equality *in* law,[62] declares Triepel. If the majority of writers, some declarations of international institutes,[63] or occasionally diplomatic declarations,[64] contend or demand the contrary, it is either the outlet of "theoretical pacifism,"[65] or a diplomatic tactic, or the expression of an exaggerated demand for distinction by states of second or third rank, which cheerfully adopted the rule in order to prevent being overlooked or experiencing disadvantages in case of invitations to international congresses or appointments in international organizations.

Triepel asserts that international law grants equality to states only in the same sense that equality is granted to citizens according to the fundamental legal rules incorporated in constitutions of the states; that is to say, in the sense inherent in the idea of justice, namely, that whatever deserves equal treatment should be entitled to equal treatment. Relative, not absolute, equality should be granted to all. Justice does not require that an *idem cuique* be applied, but merely a *suum cuique*.[66] Furthermore, while the constitutional principle within a state should be used as a guide and barrier in the "ordinary" process of legislation in such a manner that unconstitutional laws should be voided, the states, when creating particular international law, which has its origin in the free wills of those bound, should have full liberty to decide whether or not they desire to observe or cast aside the idea of equality. No state is legally obliged to recognize the effectiveness of a new rule of international law or of a new international institution to which it has not explicitly or tacitly subjected itself. Thus,

[62] Of the same opinion, among others, Pillet, *Revue générale de droit international public*, Vol. 5 (1898), p. 70 *et seq.*; Hicks, in *American Journal of International Law* (1908), Vol. 2, p. 530 *et seq.*; Brown, *ibid.*; Vol. 9 (1915), p. 326 *et seq.*; Somló, *op. cit.*, p. 156; Bilfinger, *Zeitschrift für ausl. öffentl. Recht und Völkerrecht*, Vol. IV (1934), p. 481.

[63] For example, the Declaration of the Rights and Duties of Nations, adopted by the American Institute of International Law in 1916, states in Article III: "Every nation is *in* law and *before* the law the equal of every other nation belonging to the society of nations." *American Journal of International Law*, Vol. X (1916), p. 125.

[64] In reply to the German peace security memorandum of March 31, 1936, the French government on April 8, 1936, formulated its standpoint and under item 1 demanded: "La base première des relations internationales doit être la reconnaissance de l'égalité de droit et de l'indépendance de tous les états . . . ," and under items 5 and 7 proposed the elimination of "hegemony." *Le Temps*, Apr. 9, 1936. Presumably this elimination refers to "legal" and not to "factual" hegemony.

[65] M. Huber, *Zeitschrift für Völkerrecht*, Vol. 12 (1923), p. 10. Still more outspoken is Mussolini, who in a speech on November 1, 1936, called it "*un assurdo*," a great illusion, a conventional lie. *Giornale d'Italia*, Nov. 3, 1936.

[66] Lorimer, *op. cit.*, Vol. II, p. 260 n.

according to Triepel, international relations of dependence[67] such as protectorates, financial or other controls, also the classification of nations in international intercourse, are not *exceptions* to the principle of equality; they are applications of the correctly comprehended principle of equality. The same applies to all rights of influence and obligations of alliance in international associations, in unions of states, and in similar arrangements. "There is no equality of influence in regard to the formation of concrete political relations."[68]

The methods, direct or indirect, under which hegemonical politics operate, are, like all means of influence, so multiform that it is practically impossible to incorporate them within a definite system.[69] Hegemony is always a means of integration. The weakest, but usually immediately effective, means consists in warnings; the strongest hegemonical means of influence is intervention.

Triepel states, in conclusion, that international law offers no general barrier to the development of hegemony—at least, not a hegemony of a genuine kind, that is, one which was created through leadership by a larger power on the basis of voluntary consent by the follower state. Certainly a subjugation by force is contrary to international law.[70] Genuine hegemony, however—that is, leadership and following combined on the basis of consent—is "after all, still in compliance with international law." This applies to legalized hegemonies, and not less to factual hegemonies. The factual hegemony of the Great Powers, which is said to have furnished

[67] Aside from Dickinson, *op. cit.*, Chap. VII, on "External Limitations upon the Equality of States," see also for the frequent and varied application of these institutions of international agency the recent study by Angelo Piero Sereni, "Agency in International Law," *American Journal of International Law*, Oct., 1940, pp. 638–660. The same author discusses "The Legal Status of Albania" as an example of hegemony, in this REVIEW, Apr., 1941, pp. 311–317. Triepel's *Die Hegemonie* is repeatedly referred to by Wilhelm G. Grewe, in "Protektorat und Schutzfreundschaft," *Monatshefte für Auswärtige Politik*, Apr., 1939, dealing principally with the protectorate of "Bohemia and Moravia" and the "protective friendship" of Slovakia.

[68] M. Huber, in "Rechtswissenschaftlichen Beiträgen," *Juristische Festgabe des Auslandes für J. Kohler* (1909), p. 106.

[69] Triepel, *op. cit.*, discusses these methods in detail on pp. 218–240.

[70] "Effective law is impossible without some basic standards held in common by a substantial majority of those subject to it. Totalitarianism both in principle and practice rejects all standards above the legislation of the totalitarian government. Governments professing such a doctrine cannot be reliable subjects of law, and for this reason international law has always been a weak law. When governments practice such professions, international law disappears altogether. The relation of totalitarianism to international law is therefore one of incompatibility. If totalitarianism triumphs in the present war, international law will suffer a severe decline from which it may not recover." Quincy Wright, "International Law and the Totalitarian States," in this REVIEW, Aug., 1941, pp. 738–743.

step by step an "aristocratic character" to the state system,[71] was not a development contrary to international law.[72] Even the most ardent defenders of the idea of equality have admitted this fact: "Great Powers are the leaders of the Family of Nations."[73]

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The Status of Croatia under International Law. On April 7, 1941, while the Axis Powers were invading Yugoslavia, Ante Pavelik, the well-known Croat terrorist, broadcast from Italy an appeal to the Croats to secede from the Serbs and to support Germany and Italy. Three days later, when the German troops entered Zagreb, Sladko Kvaternik, another Croat leader, proclaimed there an independent Croat state, and on April 12, a national committee declared Pavelik, who was still abroad, head of the new state. The following day he entered Zagreb, and two days afterwards he took effective power, receiving the title of *Poglavnik*, the Croat equivalent of *Führer* or *Duce*. Immediately upon his telegraphic request of April 15, Germany and Italy granted recognition of Croatia, subject to their joint determination of the new state boundaries. Pavelik at once dissolved the old political parties and on April 17 formed the first Croat government, in which he became president of the council of ministers and minister of foreign affairs; Kvaternik, his substitute and supreme commander of the armed forces; and a Dr. Kulenovich, vice-president of the council. An upper council of the Croat state was designated to function with the government.

Then followed a series of acts affecting the international status of Croatia. Recognition by Hungary followed that of Germany and Italy immediately. Shortly afterwards came recognition by Slovakia (April 16), Bulgaria (April 22), Rumania (May 7), and Japan (June 7). Croatia promptly exchanged diplomatic representatives with Germany, Italy, Slovakia, and Hungary. On June 16, the Spanish minister of foreign affairs announced that Spain would recognize Croatia promptly and establish a legation in Zagreb. But the Holy See ostentatiously refrained from any act which might be construed as recognition.[1] Under-Secretary Sumner Welles, for the United States, in acknowledging receipt of two protests of the Yugoslavian government, on May 12 and 24, against the dis-

[71] Heinrich v. Treitschke, *Politik*, 5th ed., Vol. I (1922), p. 42.

[72] Triepel, *op. cit.*, p. 218. [73] L. Oppenheim-Lauterpacht, *op. cit.*, p. 224.

[1] See official notes published May 19, 1941, in the Vatican newspaper, *L'Osservatore Romano*, pointing out that the Pope had received the Duke of Spoleto, the day before his elevation to the throne of Croatia, Pavelik, and a Croat delegation in their private and not in their official capacities. The attitude of the Holy See is politically important since the great majority of the Croat people are Catholic.

memberment of Yugoslavia and the creation of Croatia, declared May 28 that he wished to "reiterate the indignation of the government and of the American people at the invasion and mutilation of Yugoslavia by various members of the Tripartite Pact."[2]

The boundaries of the new state were determined only after its recognition on the part of the neighboring states. In fact, the boundary between Croatia and Germany, which annexed the Yugoslavian portions of Carinthia and Styria, was established only by agreement of May 13; the frontiers between Croatia and Italy, which annexed from Yugoslavia the larger part of Slovenia and Dalmatia, were fixed by agreement of May 18.[3] Apparently no formal agreement was concluded for the determination of the boundary with Hungary, whose troops, on April 10, occupied Yugoslavian territory, including the Banat of Batchka and Baranya, between the Tisza and Drava rivers.[4] The southeastern frontier of the new state was determined June 7 by a decree of Pavelik, reëstablishing between Croatia and the territories of southern Yugoslavia the frontier which had existed, 1908 to 1918, between Bosnia, now enclosed in the new state, and Serbia.[5] On October 27, 1941, a treaty fixing the frontier between Croatia and Montenegro, the new puppet state that Italy is attempting to rule, was signed in Zagreb by Italian and Croat officials. Thus the new Croatia contains approximately 115,000 sq. kms., with an estimated population of five to seven millions.

Meanwhile the internal structure of the new state was taking more definite shape. On May 14, the Croat council of ministers issued a decree reestablishing the kingdom of Croatia, extinguished in 1097. Two days later the council requested the king of Italy to designate a prince of the house of Savoy as king of the new state; and on May 19, Victor Emmanuel so designated his nephew, Aimone of Savoy-Aosta, duke of Spoleto. The same day, immediately after the proclamation of the new king in Rome,

[2] The Yugoslav notes and the reply of Under-Secretary Welles are published in *Dept. of State Bull.*, IV, No. 102, June 7, 1941, pp. 682–863.

[3] Agreements were signed in Berlin on July 8, 1941, for determination of the boundaries between the Yugoslav territories annexed by Germany and Italy.

[4] On July 27, 1941, the *New York Times* reported that differences had arisen between the Croat and Hungarian governments over boundary lines fixed by the Hungarian army, and that the Hungarian government had failed to reply to a Croat protest on the matter.

[5] Obviously this decree, being a domestic and unilateral act of the Croat state, has no binding force on the neighboring state. But since the territories adjoining southern Croatia are under the control of Germany and Italy, who claim that they can dispose of them freely, and since Croatia is under Axis control and thus would not have done an act contrary to their interests and wishes, it may reasonably be inferred that the Croat decree determining the boundary is the expression of a previous understanding between Croatia and the Axis Powers determining the boundaries in that part of Europe.

the heads of the two governments, Mussolini and Pavelik, signed the following agreements: (1) a treaty for the delimitation of the boundaries between Italy and Croatia;[6] (2) an agreement on questions of military character concerning the Adriatic shore; and (3) a treaty of guarantee and collaboration.

The birth of the Croat state gives rise to several questions of international law.

(1) A realistic consideration of the events accompanying the formation of the new kingdom can lead only to the conclusion that the new state owes its creation exclusively to the action of Germany and Italy. The new Croat régime is nothing more than a subservient government which the Axis set up on part of the territory of Yugoslavia occupied in the course of military operations against the latter. It is a well-established principle of international law that during a war a belligerent does not acquire sovereignty of enemy territory under military occupation. The action of Germany and Italy in thus disposing of Yugoslavian territory by the creation of Croatia can be considered lawful only on the assumption that their war against Yugoslavia was ended by the extinction of the latter. This assumption, however, does not seem to be justified by the events. Even if it were proved that the Yugoslavian territory is controlled by the invading troops and that the internal organization of Yugoslavia has been seriously disrupted, it is submitted that these facts would not suffice to produce the extinction of that state. In fact, the military operations of the Axis Powers against Yugoslavia are not an autonomous and isolated war. They are only episodes of a larger war in which several states allied to Yugoslavia participate, and this war still continues.

Thus the extinction of Yugoslavia as a consequence of war cannot be accepted until the final outcome of the conflict. The organization of the Yugoslavian state, moreover, is not entirely destroyed. Some of the highest officers, including the king, still act in an allied country as a Yugoslavian government, which is said to exercise its authority over units of the Yugoslavian armed forces still fighting at the side of their allies. The refusal of the United States to recognize the dismemberment of Yugoslavia and the formation of the Croat state thus appears justified not only on moral and political but on strictly legal grounds as well.

[6] Italy acquires the districts of Castua, Sussak, Cabar, and part of the district of Delnice; the most important tracts of the Dalmatian shore, including almost every port up to Cattaro; the larger part of the Dalmatian islands; and the whole province of Lubiana. The new Croat state has only two ports of any importance: Porto Re and Ragusa. Its maritime communications depend strategically and economically on Italy. Italy has granted a special administration to the newly acquired province of Lubiana, whose population is mainly Slovene (Royal Decree Law, May 4, 1941) and to the provinces of Zara, Spalato and Cattaro, whose population, apart from the cities, is predominantly Croat, and which have been grouped together in the "Governatorato" of Dalmatia (Royal Decree Law, May 20, 1941).

(2). The international status of Croatia, at the moment in which "it first becomes a part of the new European order,"[7] is especially affected by its relationship with Italy. The treaty of guarantee and collaboration, which is to last twenty-five years, provides that Italy shall guarantee the political independence and territorial integrity of Croatia (Art. 1), which is bound not to contract any obligations incompatible with such guarantee and with the spirit of the treaty (Art. 2). The two countries are to enter into fuller and closer relationship ("*nelle più ampie e strette relazioni*") in customs and currency affairs, and for this purpose will establish a permanent commission (Art. 4). They are to enter into agreements concerning railway and maritime traffic, the reciprocal treatment of their citizens, legal and cultural relations, and other matters of common interest (Art. 5).[8] The Croat government will avail itself of Italian collaboration for the organization and the instruction of its armed forces and for the preparation of the military defenses of the country (Art. 3). Military problems, however, are particularly dealt with in the military agreement, of an unlimited duration. It provides that the Dalmatian shore and islands of the Croat state shall not be fortified (Art. 1); that Croatia shall not have a navy, except for specialized units necessary for police and customs services (Art. 2); that Italy shall have the right of transit for its troops on the littoral highway, Fiume to Cattaro, and on the railroad, Fiume to Ogulin to Spalato, and on its possible prolongation to Cattaro, according to details to be worked out in a future agreement (Art. 3). To complete the arrangements, a special convention is to be concluded, regulating the administration of the city of Spalato, of its neighboring sections, and of the island of Curzola—territories which, though having a predominantly Slavic population, have been assigned to Italy.[9]

(3). The provisions of the treaty of guarantee have established an international union between Italy and Croatia aimed at the satisfaction of common interests in political, economic, monetary, legal, cultural, and military affairs, through "an intimate reciprocal collaboration."[10] The dominant position within the union is granted to Italy in the provision whereby she guarantees the political independence and the territorial integrity of Croatia. The Italian leadership is confirmed in the provisions which grant to Italy control of the military organization of the Croat state for twenty-five years and the right of transit of troops forever

[7] The phrase is used in the preamble of the treaty of guarantee and collaboration with Italy.

[8] A final protocol to the treaty provides that until the conclusion of new agreements, the treaties between Italy and the "former Kingdom of Yugoslavia" will be in force between Italy and Croatia, as far as this is compatible.

[9] An exchange of letters between Mussolini and Pavelik of May 18, 1941, provides that guarantees may be agreed upon in this convention for the protection of the Italian minorities on the Dalmatian shores and islands of Croatia.

[10] The phrase is used in the preamble of the treaty.

through certain Croat ways of communication. The manner in which the boundaries have been delimited and the obligation of Croatia neither to have a navy nor to fortify certain parts of her territory have put the new kingdom in a position of complete military dependence on Italy.

The union between Italy and Croatia has no legal machinery of an institutional character aimed at coördinating in a general and permanent manner either the internal or the international activities of the two countries. In Italy's union with Albania, such coördination does exist, and finds its legal foundation in a series of international acts and of domestic measures unifying the management of many affairs of the two countries and entrusting Italy with full control over Albania. The principal devices adopted in order to reach this result are: the identity of the head of the two states, the Albanian crown having always and only to be vested in the head of the Italian state; Italy's international representation of Albania, the former controlling the foreign affairs of the latter; the establishment of a lieutenant-general for Albania, an Italian who is also an Albanian officer, through whom Italy directs the whole political, administrative, and legislative life of the Albanian state; the formal acceptance by Albania of the political régime existing in Italy and subordination to the Italian fascist party of the Albanian fascist party, through which Italy regiments the Albanians and controls their political allegiance; and, finally, the incorporation of the Albanian army into the Italian.[11]

The legal ties between Italy and Croatia are much less close. Apparently Croatia enjoys a much larger degree of independence. The designation of the king of Croatia by Victor Emmanuel, significant as it may be from the political point of view as denoting the subordination of the new kingdom to Italy, is irrelevant for international law. In fact, it can hardly be considered an act of the Italian state, being more properly an act performed by Victor Emmanuel in his personal capacity, productive of consequences for the Croat, but not for Italian, public law. There does not seem to be any legal obligation of the Croat state to have at its head, now or in the future, a person designated by Italy or by her king. The international relations of the Croat state are carried on through its own agencies, without any preëstablished and permanent form of control on the part of Italy. No limitation on the management of its international relations derives from the treaty of guarantee and collaboration with Italy, apart from the above-mentioned obligation of Croatia not to contract any obligations incompatible with the Italian guarantee and with the spirit of the treaty. This provision presumably binds Croatia not to consent to any cession of territory or limitation of her sovereignty in favor of states other than Italy, and not to contract agreements restricting her political independence[12] or inconsistent with her ties with Italy.

[11] For more detailed information, see Sereni, "The Legal Status of Albania," in this REVIEW, Vol. 35, pp. 311 ff.

As to military relations, while Italy is obliged to defend Croatia, and practically has military control over the country, there is no military alliance and Croatia does not appear to be bound to coöperate in military enterprises of Italy.[13] The internal organization of the two countries is completely separate: Italy has no right to interfere with the domestic affairs of Croatia, except as required by the military provisions; nor is there any obligation on the part of Croatia to conform its constitutional organization to that of Fascist Italy.

(4). But the apparent independence that these provisions leave to Croatia is intended only to appease the susceptibilities of the Croat people. Full *de facto* control results from the particular measures aimed at securing the "intimate reciprocal collaboration" of the two countries. As indicated, Italy has full military dominance over the country. Italian troops are still stationed on the Croat territory.[14] The mixed commission provided for in Art. 4 of the treaty of guarantee and collaboration, and created immediately after the signature of that treaty, is presided over by an Italian; and its work has resulted in a series of special agreements which make of Croatia a financial, economic, and commercial complement of Italy. Agreements have been entered into for the issuance of a Croat currency, called *kuna*, which will have a fixed rate of exchange with the Italian lira. In the meantime the rate of exchange of the Yugoslavian currency, still in force in the Croat territory, has been arbitrarily fixed at a rate favorable to Italy. The agreements concerning railway traffic tend to direct the largest part of Croat exports toward Italian ports. Croatia will practically have no merchant marine; even the local traffic between the Croat shores and islands will be carried by Italian lines. Exploitation of water power and construction of roads in Croatia will be effected with the assistance of Italian capital and technicians.

Another manifestation of the intimate collaboration between the two states which illustrates the subordination of Croatia is seen in the acceptance on her part of the political and constitutional doctrines of Italian Fascism. The internal structure of the Croat state is not yet entirely defined. However, Virginio Gayda, who is considered the mouthpiece of the head of the Italian government, wrote May 20 in the *Giornale d'Italia* that "the identity of political aims of the two states will find its intimate con-

[13] Thus Croatia could not be a member of the League of Nations without Italy's consent. [13] Croatia is not at war with Russia, although Italy is.

[14] This is made clear by an order of the day issued by Mussolini on May 19, the day after the signature of the Italo-Croat treaties, stating that "the Italian armed forces now on the territory of the independent state of Croatia cease as of tomorrow to possess the character and prerogatives of an army of occupation and assume the character of troops stationed on the friendly and allied territory of the kingdom of Croatia." By agreement with the Croat government, German troops will be stationed in the city of Zemun, on the Southern bank of the Danube, for the duration of the war.

firmation in the identity of political forms and institutions, which the new Croat state intends to construct similar to Fascism, i.e., a single totalitarian party, a corporative régime, emphasis on agricultural policy, and racial intransigence." From a strictly legalistic point of view, the adoption of such a totalitarian régime represents the choice of the organization they think fit for the Croat people by some national leaders purportedly acting for it. On the contrary, this régime, which certainly does not correspond to the traditions, nor probably to the wishes, of the country, has been actually imposed by Italy partly for ideological reasons, but above all because it permits Italy to control easily the whole political life of Croatia. The existence of a totalitarian and authoritarian régime, in which every power comes from above and is concentrated in a few key men, permits Italy, through control of the leaders, like Pavelik and Kvaternik, to dominate the entire machinery of the Croat state.[15]

Thus the subordination of Croatia is not accomplished through legal measures, having a general and permanent character and expressly providing for such a result. Actually, it results indirectly from separate agreements on particular questions, and even more through *de facto* situations which practically give Italy the almost complete control of the whole internal and international life of the Croat state.[16] The relationship between Italy and Croatia can be defined as a *de facto* protectorate, very similar to the protectorate existing *de jure* between Germany and Slovakia, both in the powers given to the protecting state and in its practical results.[17]

[15] The government-controlled Italian press and the heads of important Fascist organizations make it clear that the Croat frontiers have been delimited with special regard to the strategic needs of Italy (see Gayda in *Giornale d'Italia*, May 20 and 21, 1941); that the new kingdom is included within the Italian sphere of influence (Ansaldo in *Il Telegrafo*, May 18, 1941); and that the economy of the new state is destined to become only an accessory of Italian economy (speech of the president of the Fascist Federation of Tradesmen, in *Il Sole*, June 1, 1941).

[16] Both Pavelik and Kvaternik took refuge in Italy after the murder of King Alexander of Yugoslavia in Marseilles (October 9, 1934), in which they were accused of having taken direct part. The judgment of the Court of Appeals of Turin, November 23, 1934, refusing their extradition, which had been requested by the French government, is published in *Foro Italiano*, 1935, Sec. II, p. 20. It has been repeatedly affirmed since the assassination that Pavelik and Kvaternik are in the pay of the Fascist government.

[17] This treaty provides that the Reich shall undertake to protect the political independence of the Slovakian state and the integrity of its territory (Art. 1); that for the execution of that protection German armed forces may be stationed in certain zones of the Slovakian state, where they will enjoy special privileges and may erect military plants (Art. 2); and that the Slovak government will organize its own military forces in close coöperation with the German government (Art. 3). Corresponding to the relationship of protection agreed upon, the Slovak government will conduct its policy in close coöperation with the German government (Art. 4). (Croatia,

(5). The peculiar status of the kingdom of Croatia gives rise to a question as to whether it might be considered a real subject of international law. There is no doubt that the new state is vested with all of the formal characteristics of an international person: it has a territory, a population, and a complete political, economic, and social organization, including its own agencies for foreign relations, an army, and a bank of issue. The new state has undergone the whole international ceremonial: it has been recognized by several states and has even recognized on its part the Japanese puppet-state of Nanking; it has concluded international agreements of a political, economic, and currency nature on matters of labor, and for the determination of its boundaries; and finally has been admitted solemnly into the Axis (June 15). But in reality Croatia is hardly more than a legal fiction in view of its subordination to Italy, of which it constitutes an appendage from the political, economic, and strategic points of view.[18] Therefore, even if it is maintained that Croatia is a subject of international law because it has some international rights and duties, it must be recognized that those rules of international law do not find application to it which presuppose actual equality with other states and internal and international independence. It could hardly be maintained that Croatia, even when not taking an active part in hostilities, may claim to be treated as a neutral by a state at war with Italy. On the other hand, special international obligations toward third states may result for Italy by reason of her control over Croatia. In case of international wrongs committed by Croatia against third states, Italy may be held jointly liable if the act is within her sphere of control; if Croatia should be considered a state successor of Yugoslavia, the duties therefrom falling upon her would also fall upon Italy, for whose benefit Croatia actually exists. These are some of the problems to which the birth of the new kingdom gives rise. Croatia, together with Slovakia and Albania, probably foreshadows the new type of Axis-controlled totalitarian state that the Axis Powers would create in various parts of Europe, should they succeed in establishing their hegemony on that continent. A general reconsideration would in that situation be necessary concerning the limits within which the traditional rules concerning the subjects of international law would find application to these puppet states.

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on the contrary, is only bound not to contract obligations incompatible with the Italian guarantee.) Germany is not legally entitled to interfere with the domestic affairs of Slovakia. The Slovakian constitutional law of July 21, 1939, has, however, established a Fascist régime, and all the key men are persons of proved devotion to Germany.

[18] Following the Italian example, Croatia on June 22, 1941, requested the United States to close immediately its consulate in Zagreb.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Professor David P. Barrows is on semi-sabbatical leave from the University of California this semester, and Professor Eric C. Bellquist is in the meantime serving as chairman of the political science department.

Dr. Herman Finer, of the London School of Economics and Political Science, who was to have served as visiting professor at the University of Michigan during the first semester, was recalled to England in October.

Professor Ralston Hayden, on leave from the University of Michigan, has been appointed a member of the Board of Analysts in the federal Office of Coördination of Information.

Professor William Anderson, of the University of Minnesota, has been elected president of the Minneapolis Research Bureau, an affiliate of the Minneapolis Civic Council. The Bureau is organized for research in problems affecting the welfare of the city, including matters of government, taxation, and administration.

Dr. Harold D. Lasswell is continuing a second year as chief of the Experimental Division for the Study of War-Time Communications, at the Library of Congress, and would be glad to be informed of research studies in progress in the field of crisis communication.

Professor Frank M. Stewart, director of the bureau of governmental research at the University of California at Los Angeles, was elected president of the Western Governmental Research Association at that organization's meeting at Sacramento in October.

Professors John A. Fairlie, of the University of Illinois, Roger Shumate, of the University of Nebraska, and Carl M. Frasure, of West Virginia University, were delegates to the thirty-fourth annual conference of the National Tax Association in St. Paul, October 13–16. Professor Fairlie also lectured to the graduate seminar in public administration at the University of Minnesota.

Professor A. N. Christensen, of the University of Minnesota, was a member of the lecture staff of two schools held under the auspices of the Division of Program Study and Discussion of the U. S. Department of Agriculture at Spokane, Washington, October 27–31, and Portland, Oregon, November 3–6.

Mr. Henry N. Williams, who recently completed his work for the doctorate in public administration at the University of Chicago, has been

added to the staff at Vanderbilt University, and is giving half his time to the new Institute of Research and Training in the Social Sciences.

Professor H. Schuyler Foster, of Ohio State University, was at the University of West Virginia during the second term of the summer quarter. Earlier in the summer, he was a member of the War Communications Research Division of the Library of Congress.

Dr. Max Ascoli, dean of the Graduate Faculty of the New School for Social Research, has been appointed associate director of cultural relations of the Committee for the Coördination of Commercial and Cultural Ties Between the American Republics. During his year's leave of absence, his position on the Graduate Faculty is being filled by Dr. Hans Simons.

Dr. Pitman B. Potter is engaged upon a research project at the Brookings Institution, and in the autumn will assume the chairmanship of the department of political science at Oberlin College, succeeding Professor Oscar Jászi, who at that time will retire from active teaching.

Professor Harvey Walker, of Ohio State University, has been called to active duty as a captain in the Finance Department of the U. S. Army, and has been given leave of absence from the University for a year, although he will continue to supervise the work of his present graduate students. He is assigned to duty as assistant finance officer in the Finance Office, U. S. Army, Columbus, Ohio.

Professor William B. Ballis has received a year's leave from Ohio State University to work in Washington in the national defense program. Going first as Russian and Far Eastern expert in the Office of the Administrator of Export Control, he has subsequently been transferred to the Office of Production Management, where he is senior liaison officer for Russia and China. Professor Ballis' place at Ohio State is being filled this year by Professor James T. Watkins IV, recently of the University of Chicago.

Professor Amry Vandenbosch, of the University of Kentucky, has been granted leave of absence to become an associate in the Division of Special Information, Office of the Coördinator of Information, at Washington. During Professor Vandenbosch's absence, Professor J. B. Shannon is acting head of the political science department at Kentucky.

The Connecticut Valley Political Science Association has agreed to meet in Amherst, Massachusetts, next spring, with Massachusetts State College and Amherst College acting as hosts.

Professor Frank M. Russell, of the University of California, has taken a semester's leave in order to engage in research and writing.

At the University of Missouri, Dr. William L. Bradshaw has been advanced to a full professorship; and at Hamilton College, Dr. Henry Janzen to an associate professorship.

Miss Sarah G. Blanding has resigned her associate professorship of political science at the University of Kentucky to accept an appointment as director of the School of Home Economics at Cornell University.

Dr. Alexander T. Edelmann, of the University of Tennessee, has been appointed assistant professor of political science at the University of Kentucky.

Dr. Edward George Lewis has been appointed instructor in government at the University of Texas, and Mr. Paul Kelso at Ohio State University.

Recent recipients of the doctor's degree at Ohio State University are Robert Robbins, instructor at Tufts College, and Ceph L. Stephens, instructor at Ohio State.

At the University of Virginia, Dr. Alfred Fernbach, who received his degree at the University of Wisconsin last June, is substituting for Professor R. K. Gooch during the latter's period of service in connection with the national defense program.

Dr. Angus M. Laird, assistant professor in the department of history and political science at the University of Florida, has been appointed merit system supervisor of the merit system of the Florida state board of health and the crippled children's commission.

Senator Gaetano Mosca, eminent teacher of political theory and public law at the Universities of Palermo, Turin, and Rome, and author of many scholarly works, died at Rome on November 9 at the age of eighty-three. An English translation of his well-known *Elementi di Scienza Politica*, prepared by Professor Arthur Livingston, of Columbia University, and bearing the title, *The Ruling Class*, was published at New York in 1939.

An institute of Pan-American relations will be held at Drake University, December 5–6. Among persons who will participate are Professors J. Fred Rippy, University of Chicago, and F. W. Schultz, Iowa State College; Dr. Wallace McClure, U. S. Department of State; and Senor Gonzalo Macias, agricultural attaché of the Mexican Embassy.

Professor Stuart A. MacCorkle, of the University of Texas, has been granted leave of absence for the present academic year, and has been awarded a research fellowship by the University Research Institute. He likewise is serving as visiting educational counsellor at the National Institute of Public Affairs in Washington, D. C. Professor Charles A. Timm is also on leave during the first semester and is working under a grant from the University Research Institute.

The annual series of lectures at Berkeley, sponsored by the President's Committee on International Relations, University of California, was this year entitled "Problems of Hemispheric Defense." The panel of lecturers included Professors John B. Condliffe, William H. Alexander, Russell H. Fitzgibbon, Baldwin M. Woods, and Herbert I. Priestley.

In August, Professor Edward F. Dow, of the University of Maine, was appointed by Governor Sewall chairman of the state personnel board, separated under a legislative act of 1941 from the department of finance. Formerly the budget officer was *ex officio* chairman of the board.

Mr. James O. Overby has resigned an assistantship at the University of Kentucky to accept appointment to an instructorship at Indiana University.

Mr. W. Crafton Nealley, formerly with Central Washington College of Education, has been appointed to an instructorship at Syracuse University.

Mr. Leroy Ferguson has been appointed instructor in the division of political science at the Florida State College for Women.

Mr. Norman Beck, who received his doctorate at the University of Chicago last summer, has been appointed to the department of political science in the School of Business of New York University.

Dr. Karl A. Bosworth has resigned his position with the bureau of public administration at the University of Alabama to accept the position with the Illinois Legislative Council recently vacated by Dr. Gilbert G. Lentz.

At Dartmouth College, Mr. John Pelényi, former minister to the United States from Hungary, has been appointed visiting lecturer, with the rank of professor of political science, for the current academic year, and Dr. Bernard Brodie, formerly of the Princeton Institute for Advanced Study, has been appointed instructor. Professor Harold J. Tobin has succeeded Professor Hugh L. Elsbree as chairman of the department.

Professor David Y. Thomas, lately retired at the University of Arkansas, has been serving as visiting professor at the University of Texas during the first semester of the present year. Professor A. R. Hatton, of Northwestern University, will serve in the same capacity during the second semester. Professor Thomas is teaching courses in international politics and international law; Professor Hatton will conduct courses in municipal government and American political issues.

Dr. W. O. Scroggs, formerly with the Council on Foreign Relations, has been appointed dean of the Graduate School at Louisiana State University and will have charge of the undergraduate course in American diplomacy and international relations formerly conducted by Dean Charles W. Pipkin.

Professor Philip H. Taylor is on leave from Syracuse University, and is serving in the Intelligence Division of the War Department at Washington. To the resulting vacancy in the field of international affairs, Professor W. Lonsdale Taylor, recently returned from study in Mexico, has been appointed.

At the University of Oregon, Professor James D. Barnett, head of the department of political science for thirty-three years, has been made professor emeritus, and Professor William C. Jones, formerly of Willamette University, has been named as his successor. Dr. Herman Kehrli has been promoted to an associate professorship, and Dr. Fred V. Cahill, who received his degree at Yale in June, has been appointed instructor.

At the University of Kentucky, Professor E. G. Trimble has been made acting director of the bureau of government research for the current year, and Mr. John E. Reeves has been promoted from instructor to assistant professor.

Mr. Dale Pontius has become an associate planning editor under the National Resources Planning Board and is occupied with a study of industrial location as related to national defense.

Dr. Albert Lepawsky is director, and Professor Leonard D. White chairman of the advisory committee, of the Institute of Public Service recently established by the University of Chicago and described briefly in the preceding issue of this *Review*.

At Seattle, early in November, the Bureau of International Relations presented Professors Graham H. Stuart, of Stanford University, and L. B. Simpson, of the University of California, in a symposium on Latin American affairs.

An all-university study of the Louisiana state revenue system is under way at Louisiana State University under the direction of Professor Jefferson B. Fordham of the law faculty. Eight departments of teaching and research are associated in the undertaking. Mr. Donald H. Morrison, instructor in government and associate in the bureau of government research, is giving half time to the project, and Professor Charles S. Hyneman, director of the bureau of government research, is a member of the coördinating committee set up to supervise the study.

The Third Annual Conference on Governmental Problems, held at Marshall College on October 22, was devoted to the subject, "Government and Labor," with Dr. Marshall E. Dimock, U. S. Department of Justice; Robert J. Watt, A. F. of L. representative, National Defense Mediation Board; Philip G. Philips, director, National Labor Relations Board,

Ninth District; Charles J. Sattler, commissioner of labor, state of West Virginia; John B. Easton, West Virginia Industrial Council (C. I. O.); and other state and local labor and government leaders participating. Professor Conley H. Dillon, chairman of the department of political science, served as chairman of the committee on arrangements.

At Louisiana State University, Professor Charles S. Hyneman has been relieved of his teaching duties for the current year so that he may assist in the work of the newly created department of state civil service. The University's bureau of government research has been asked to lay the groundwork for a program of public service training and to undertake certain duties in connection with the classification of state employees, and Dr. Hyneman has been given the title of supervisor of classification and public service training in the civil service department. Professor Robert J. Harris has been appointed head of the department of government at the University for the current year.

The Southern Institute of Local Government, which on October 17 and 18 held its second meeting at the University of Tennessee, has been organized permanently with a directing committee under the chairmanship of Mr. Frank Ahlgren, editor of *The Commercial Appeal* of Memphis, Tennessee. This year's meeting was devoted to problems of local finance. The principal speakers included Mr. J. M. Cunningham, deputy comptroller of New York City; Mr. Walter Millard, of the National Municipal League; Dr. Frederick L. Bird, of Dun and Bradstreet; Mr. Harland Bartholomew; and Dr. Albert Lepawsky, of the University of Chicago.

The committee of the American Political Science Association appointed to consult with the Advisory Board of the National Citizenship Education Program sponsored by the U. S. Department of Justice (see this REVIEW, October, 1941, p. 965) consists of the following persons: Marshall E. Dimock, U. S. Department of Justice, chairman; Franklin L. Burdette, Butler University; Joseph P. Chamberlain, Columbia University; Kenneth Colegrove, Northwestern University; John M. Gaus, University of Wisconsin; Pendleton Herring, Harvard University; Roscoe C. Martin, University of Alabama; John B. Mason, Fresno State College; Peter H. Odegard, Amherst College; Mrs. Catheryn Seckler-Hudson, American University; Russell M. Story, Claremont Colleges; and Elbert D. Thomas, U. S. Senator from Utah.

The Southern Political Science Association held its fourteenth annual meeting at Nashville, Tennessee, November 14–15. The subjects for discussion included "Competence in Political Science," "One-Party Government in the South," "Civil-Military Relations," and "Post-War Objectives." Mr. Arthur S. Flemming, member of the U. S. Civil Service Commission,

was one of the speakers, and Professors T. V. Smith, of the University of Chicago, and Harvey Walker, of Ohio State University, represented the American Political Science Association. Some sessions were held jointly with the Southern Economic Association. Officers were elected for the coming year as follows: president, Roscoe C. Martin, University of Alabama; vice-president, James Hart, University of Virginia; recording secretary, John T. Caldwell, Vanderbilt University; secretary-treasurer, Manning J. Dauer, University of Florida; members of the Executive Council; Taylor Cole, Duke University; Paul K. Walp, University of Tennessee; Miss Marian D. Irish, Florida State College for Women; and A. B. Daspit, Louisiana State University. Robert J. Harris, Louisiana State University, was reëlected editor of the *Journal of Politics*.

Northwestern University is announcing a program of post-entry university training for public service employees in the Chicago area. The program is sponsored by a group of public officials including the following: Louis Brownlow, director, Public Administration Clearing House; H. H. Woolhiser, village manager, Winnetka; Robert J. Dunham, president, Board of Commissioners, Chicago Park District; Robert Kingery, Illinois State Planning Commission; W. W. DeBerard, city engineer of Chicago; and Joseph L. Moss, director, Cook County Bureau of Public Welfare. Professor George C. S. Benson, of the political science department, is chairman of the University committee in charge of the program. Representatives of the schools of commerce, law, engineering, education, and of the departments of economics, psychology, and sociology are included. The main training program will be carried on at Northwestern's Chicago campus under the auspices of University College, and will specialize in courses requested by public officials and employees and of genuine practical value to them. Those giving courses will include James M. Mitchell, executive director, Civil Service Assembly; David W. Robinson, executive director, Public Administration Service; V. K. Brown, director of recreation, Chicago Park District; and other officials, in addition to members of the University staff.

Exiled Governments: Their Official Records. The removal of the seat of government of the Polish Republic to France on September 25, 1939, marks the beginning of the march of other governments into exile. Their current printed official records in exile may assume much more than ordinary importance if and when these governments return to their national territories. In view of the difficulty of communications at the present time, a brief description of the printed records may likewise be of more than ordinary importance.

For Poland, which had removed from its national territory on September 17, 1939, the removal to the territory of a then friendly ally was

heralded by the reappearance at Paris of the *Monitor polski*, the official gazette, No. 213 of 1939, under date of September 25. Publication of this gazette was continued at Angers, France, until No. 110–116 of 1940, dated May 20. Legislation of the Polish government in exile was published in the *Dziennik ustaw*, the law gazette, from No. 100 of 1939 to No. 9 of 1940, dated April 30. Upon the transfer of the seat of government to London about the time of the downfall of France, publication of the law gazette alone was resumed, with No. 1 of 1941, dated January 21.

Origins of the Czechoslovak government in exile are first marked by the establishment of *Česko-slovenský boj*, the official paper for the Czechs and Slovaks abroad at Paris on April 28, 1939, some weeks after the invasion of Czechoslovakia. The first number of *Úřední věstnik Československý*, the official gazette of the provisional Czechoslovak government, dated at Paris on January 1, 1940, contains the agreement concerning the establishment of a Czechoslovak army in France. No. 9 of 1940, the final issue of this law gazette to appear in France, was dated May 29, 1940. No. 10 of 1940, dated December 4—the first issue to appear in Great Britain—contains the exchange of correspondence marking the official recognition on July 21, 1940, of the Czechoslovak government in exile and its authority to function in England. No. 1 of the bulletin of the Czechoslovak State Council was issued in March, 1941, under the title, *Zprávy Státni rady*.

For Belgium, the first issues in exile of the *Moniteur belge*, the official gazette, are Nos. 139–151 of 1940, for May 18–30, 1940, containing the cabinet decree proclaiming that the king, being under the power of the invader, was unable to reign. The first issue of the gazette of the Belgian government in exile in England bears the date November 22, 1940. At the same time, the German-sponsored government of Belgium at Brussels is issuing a *Moniteur belge*.

For the Netherlands government in exile, the first issue of the *Nederlandsche staatscourant*, the official gazette, to appear in London was No 150 of 1940, dated May 24, 1940, the seat of government having been transferred from The Hague about a week earlier. At the same time, a continuation of the *Nederlandsche staatscourant* is being issued at The Hague under German occupation. Legislation is being issued from London in the *Staatsblad*.

For Norway, the first issue in England of *Norsk Lov tidend*, the law gazette, was printed under date of August 15, 1940, being a revision of the number issued in Norway on May 9, 1940, which contained the orders issued in April beginning with the invasion on April 9. Under date of August 30, 1940, the Norwegian Department of Foreign Affairs began publication at London of *Norsk tidend*, a weekly for Norwegians in England.

For "France Libre," under the leadership of General de Gaulle at London, the publication of the *Journal officiel de la France libre* was initiated under date of January 20, 1941. This had been preceded by one number (August 15, 1940) of a *Bulletin officiel des Forces française libres.* French Equatorial Africa, organized on September 1, 1940, as Free French Africa, by a representative of General de Gaulle, began issuing its official journal at Brazzaville on September 15, 1940, under the title, *Journal officiel de l'Afrique française libre et de l'Afrique equatoriale française.*

For the Grand Duchy of Luxemburg, the government in exile began to issue the *Mémorial,* its official gazette, at Montreal, Canada, with No. 1 of 1941, dated February 15.

In addition, there remain the still more recently exiled governments of Greece and Yugoslavia, about the printed current records of which no information is at present available.

JAMES B. CHILDS.

Library of Congress.

What is Democracy? By Charles E. Merriam. (Chicago: University of Chicago Press. 1941. Pp. 115. $1.00.)

Democracy in American Life. By Avery Craven. (Chicago: University of Chicago Press. 1941. Pp. 143. $1.00.)

Aspects of Democracy. Edited by R. B. Huliman. (Baton Rouge: Louisiana State University Press. 1941. Pp. 113. $0.50.)

In our preoccupation with finding the best means for national defense, it is important that we do not lose sight of the basic ends they are designed to serve, namely, the preservation of the democratic service state against the challenge of a totalitarian servile state. We need to be reminded again and again that "democracy" and the "democratic way of life" are not impoverished eighteenth-century symbols signifying nothing to a world in the throes of a managerial revolution. Democracy must restore, revive, or win anew faith in its purpose and its destiny; for if such faith is lacking we face inevitable defeat. In war, said Napoleon, "morale is as two-to-one in relation to material." To promote and sustain morale, we need more than anything else a clear understanding of and firm belief in the cause for which we fight. The tools of war are essential. Discipline and sacrifice are necessary. Efficient and clear-sighted leadership is indispensable. But without the will to win, all these will avail us nothing. The will to victory, in turn, must come in a democracy, not from blind unreasoning obedience, but from an understanding of the issues at stake. In promoting that understanding, these lectures at the University of Chicago and Louisiana State University make a significant contribution.

Professor Merriam sets forth in lucid and, at points inspired, prose the meaning of democracy, equality, and liberty. A concluding lecture on "Making Democracy Work" is a plea for national planning within the framework of a régime of liberty and law. Democracy, he rightly says, "is not dependent upon any particular economic system. . . . It is not the property of the white or the black or the brown race. It is not a possession of Aryans or non-Aryans." It is based fundamentally on the ineradicable and universal craving of human beings for recognition. It assumes the "dignity of man and the importance of treating personalities upon a fraternal rather than a differential basis." It assumes not the *identity* but the *equality* of men and women, and that, given opportunity for development, "the possibilities latent in human personality" are almost endless. It is precisely because democracy is based on equality and liberty that it affords a better opportunity for personal development of individual differences and capacities than systems based on inequality and servility.

Professor Craven undertakes to show how the general principles set forth by Professor Merriam are related to the pattern of American life.

Under Jefferson's leadership, he says, "democracy became the weapon of an important element in American life for the purpose of giving shape to the politico-economic structure." One may quarrel with Professor Craven's insistence that the Constitution was a reactionary "return to London by way of Philadelphia," or that the "democratic dogma" which "justified independence . . . had done little to alter the American social order as it had grown up from European beginnings." Professor Jameson's eloquent and convincing volume on *The American Revolution Considered as a Social Movement* contains enough data to cast doubt on such a thesis. But with Professor Craven's discussion of "The West and Democracy," "Democracy and the Civil War," and "Democracy and Industrial Capitalism" no one can seriously differ. The very critical tone in much of what he says helps to carry conviction and to renew one's faith in *Democracy in American Life.*

The Defense Lecture Series on *Aspects of Democracy* adds little that is new to the analysis of democratic theory. The individual lectures are too short to allow for much more than a statement of opinion, the longest of them being only nine pages. Throughout the volume there is, however, a refreshing confidence in the strength of free institutions.

If one were to summarize the contents of all of these lectures, one might say that as Fascism and Nazism deny liberty, equality, and fraternity, democracy represents their positive affirmation. It assumes that no man is good enough to be the irresponsible master of another. It maintains the integrity of individual personality. It believes that governments exist, not as ends in themselves but to make life good, not for a special class or caste, not for a mystical state, but for living, sentient, individual men and women and their children. It bases power on consent and organizes the state for the common needs and aspirations of its citizens. It believes that we should coöperate standing upright and not on our knees.

PETER H. ODEGARD.

Amherst College.

Public Policy and the General Welfare. By CHARLES A. BEARD. (New York: Farrar and Rinehart, Inc. 1941. Pp. x, 176. $1.50.)

This is a collection of essays, most of which have appeared in books or articles published since 1935. The logic that ties them together is therefore not so close or complete as the title promises. Yet the volume contains a restatement of some of the basic notions with which the distinguished author has been occupied in recent years, as well as older expressions of faith and insight. First in order, and perhaps in importance, is Beard's belief that a scientific or deterministic social philosophy is impossible of realization and that effort to attain it should be given up. All social philosophies at bottom start from ethical assumptions. Therefore if we

are to use our intelligence effectively we would best recognize our inability to escape from value assumptions, admit them for what they are, "set them forth as fully and clearly as possible, and then proceed to a consideration of the probabilities, limitations, and methods of realization, employing the most rigorous scientific method in the process." In the present period of world social crisis, the search for assured guides either in historical systems of thought or in scientific systems is futile.

While these truths are set forth as universals, Beard is preoccupied with their bearing upon the problems of America. Therefore in these essays his calls to social "scientists," statesmen, and the public are cupped in the direction of his fellow-countrymen. To them he says: "The condition precedent to attacking the problem of the crisis is then to determine: What is the ideal arrangement of economic and social life which we desire to bring into being, and thus rid ourselves of the undesirable things which make the crisis for us? Simple as this formula is, it constitutes a revolution in the positive and scientific procedures to which contemporary minds have so widely enslaved themselves, to their own defeat. By no other procedure can the confusion in thought and policy be avoided."

Most of the volume is made up of brief, and in some cases fragmentary, essays which explain and justify, for the most part, the democratic elements in the American political and social system, or which suggest some of the ingredients in Beard's recipe for American welfare. Thus he insists that, however much the democratic idea may owe to the rise of capitalism, its paternity is of humbler, more generous origin, with the despised seventeenth-century Levellers emitting the seminal demands essential to its propagation. Springing from social forces far more humane than capitalism, American democracy is today in object and method no mere foil for capitalism. It has, as the author sees it, six enduring elements: "popular government within a span of time, efficiency in function, sustaining economy, civil liberty, appropriate education, and the spirit of humanity and enlightenment which lifts men and women above the beasts of the field and confers upon them moral rights and social duties."

Two essays explain and defend the Hamiltonian interpretation of the powers of the federal government under the general welfare clause of the Constitution. Two others emphasize the importance of cultural liberty and the error of the traditional identification in general thought, economic theory, and constitutional law (for the last of which Burgess and Cooley receive particular blame) of liberty with economic *laissez faire*.

The final essay is an eloquent and penetrating statement of the function, process, and significance of administration in our Great Society. In the light of the public duties now developing, Beard finds "no other science more important in the present age than that of administration." In it rather than the sword is the "key to enduring power" and "human welfare."

The brief epilogue is a warning to the layman, for whom this volume seems particularly intended, to beware of viewing American problems divorced from knowledge of our particular experiences. European analogies, with which the smooth-tongued ideologues make commerce, are often false to the American situation. Thus political wisdom includes an understanding of the differences and peculiarites of our own experience and practice.

Because the reviewer's values and judgments lie so close to those which Beard expresses in these essays and elsewhere, he can only record his disappointment that some of the essays are so incomplete. This applies particularly to Chapters VI, VII, and VIII, in which the Supreme Court rather than Beard carries on most of the brief conversation. Nevertheless, the volume offers stimulating intercourse with one of the most enlightened and humane minds engaged in interpreting American public affairs.

CHARLES MCKINLEY.

Reed College.

Constitutional Revolution, Ltd. BY EDWARD S. CORWIN. (Claremont, California: Claremont Colleges. 1941. Pp. ix, 121. $2.00.)

In the three lectures here published, Professor Corwin is not attempting to make a comprehensive, or even an entirely systematic, survey of the cases decided between 1935 and 1940. Rather is he concerned with the general character and the consequences of the limited constitutional revolution which took place in these years. The first lecture, indeed, is devoted, not to this particular period, but to a group of illustrative cases tending to demonstrate how broad was the freedom of choice open to the Court when the New Deal legislation came up for judgment. The usual argument for judicial review, that the courts only interpret the Constitution and cannot alter its meaning—that judicial review is, therefore, preservative of the document as it came from the Fathers—is not supported by the record. "Quite to the contrary, the chief result of judicial review has to date been the Court's emancipation from the constitutional document." So far as concerns a major share of the issues presented to the Court, that body had the choice between "yes" and "no," the opportunity "to translate into juridical idiom almost any result which it might decide to be for the best interest of the country."

The first part of the second lecture takes up the rulings in the Schechter, Gold Clause, Carter, and Butler cases. One who seeks a methodical analysis of this group of cases will not find it here, but he will find a number of pungent and, at times, suggestive comments upon the character and course of this series of decisions. Beginning in the middle of the chapter, the great change signalized in the N.L.R.B. and Social Security Cases is discussed. Some of the subsequent decisions are mentioned, but not considered at any length.

It is the last chapter in which appear Professor Corwin's observations on the results of the switch beginning in 1937. There are three casualties of this revolution and one general consequence which springs from the nature of the casualties. The judicial doctrines which can be listed as losses in the battle for judicial supremacy are the *laissez-faire* theory of governmental functions, the theory of competitive federalism, and the doctrine of separation of powers as expressed in the Schechter opinion. The strategical consequence of these casualties is the decline in the scope and effectiveness of judicial review.

With this classification of the changes produced by the recent revolution I agree. More than that, I have found this brief chapter the most interesting series of observations upon the recent history of our most peculiar institution that I have read. But if I both agree with and applaud the general argument of the chapter, there are several interstitial points with which I do not entirely concur. Thus, while I fully agree as to the significance of the recent decline of judicial *laissez faire*, I should doubt whether before 1937, or at least before 1935, the ideas of Adam Smith were applied with quite such rigor as is suggested in these pages. And while I agree with nearly all of the statements concerning the break away from Justice Roberts' concept of "competitive federalism" (which also seems to me a much more useful term than Professor Corwin's earlier "dual federalism," for all federal systems must, in some respects function dually; competitiveness is not so essential), I feel that Marshall is at least as much to blame for the early beginnings of this doctrine of fear and jealousy as were his successors. The neglected case of Weston v. Charleston is a prime example, and it is still good law.

It is impossible to disagree with Professor Corwin's conclusion that the importance of judicial supervision has declined. This will be so until the Court again becomes representative of an outgrown point of view, and again has the determination to enforce its will. Judicial review as we know it today has its uses, however, particularly in the rationalization of problems of political power. And not the least encouraging tendency of the years coming immediately after the battle of 1937 was that toward a more zealous guardianship of civil rights.

BENJAMIN F. WRIGHT.

Harvard University.

John Locke and the Doctrine of Majority Rule. By WILLMOORE KENDALL. (Urbana, Illinois: University of Illinois Press. 1941. Pp. 141. $1.50, paper, $2.00 cloth.)

The relationship of majority rule and democracy needs more attention than it has generally received. From that viewpoint, the work under review is heartily to be welcomed. For Professor Kendall is concerned, not simply with the theory of majority decision, but rather with a complex

of ideas which together constitute the philosophy of majority-rule democracy. Nor is he concerned with John Locke for his own sake, or in terms of purely historical analysis. Rather, he uses critical discussion of Locke's political theory, including his views concerning the rights and powers of majorities, as a basis for propounding a view of the democratic process which seems to him logical, defensible, and practically desirable.

The work is divided into two parts. The first analyzes the development from the theory of majority decision to the doctrine of majority-rule, and insists that majority-rule democrats must accept, together with their equating of majority decisions with unanimous ones, the doctrines of formal political equality and formal popular sovereignty, and an insistence on the necessity of techniques for discovering the popular will. There, too, he shows how various theorists before Locke dealt with the problem of the use of majorities as a technique for reaching decisions, and argues that only with John Locke did the full problem of majority-rule get presented. Lastly, he argues that, following Locke's time, his ideas were taken for granted, not adequately examined, and generally misinterpreted. While he urges that Locke's *Two Treatises* showed numerous inconsistencies, and in particular failed adequately to reconcile an absolutist ethic and a theory of natural rights with a doctrine of majority-rule, he is convinced that it is an error to neglect the latter, or to read the work exclusively in terms of the former, as has so frequently been done. In particular, he argues, not entirely correctly, that this error has been regularly committed by American interpreters, who have made of Locke a defender of absolute rights (especially the rights of property) and of judicial review. Hence not the least of his concerns is to defend the straight majoritarian thesis in American politics by showing that it is not totally in opposition to Locke's teachings.

The second part of the book is devoted to a detailed critical analysis of Locke's statements, not only on majority rule, but on inalienable rights, the law of nature, popular sovereignty, and political equality, in order to demonstrate these theses. Professor Kendall claims that Locke, generally regarded as the prince of individualists, and a defender of absolute rights prior to and above the state, was in reality no such thing. Rather, while he did regard individuals as having rights, he regarded those rights as subordinate to, and to be interpreted in terms of, a doctrine of community welfare, of the conditions and contents whereof the majority was judge. There were, indeed, difficulties in his various views as to the law of nature, and he did not succeed in solving the problem he had posed of relating individualist doctrine to a doctrine of the supreme claims of community. But his theory of majority rule was an attempt to do so, and was not simply a theory of decision-making within a sphere limited by the claims

of individuals. Rather it may be not unjustly interpreted as a consequence of a doctrine of consent, by which men as political-social animals agree to be bound by majority decisions and to accept the majority as the proper authority for interpreting community will, and for deciding what are the just claims of individuals. Professor Kendall confesses that Locke does not make this completely clear. His failure is due to an inadequate stress on the significance of popular consultation, lack of a fully developed institutional system which would make majority-rule democracy the clear solution of his problem, and, above all, a curious blindness to the proper philosophical distinction between unanimity and less than unanimity. These inadequacies were due to his failure to perceive and develop his own latent premise that, granted that the average man is rational and just, then a majority properly has a claim to embody objective moral standards. Nevertheless, while Locke did fail, sometimes astonishingly, to discover the true clue to his difficulties, he is, in Kendall's view, quite clear in his acceptance of the power and right of majorities as against any individualist or higher-law theory.

Perhaps the major criticism to be made of this thesis is that, while it very neatly shows the totally different basis of a doctrine of unanimity and of anything less than unanimity, however close to it, it is surely false in its claims (a) that there are no genuine moral distinctions between bare majorities and overwhelming ones, and (b) in its total failure to note that, while in the sphere where decisions have to be made it is necessary for democrats to accept even a bare majority, there are spheres where decisions do not have to be made, and these spheres are not determined simply by the majority, or on the basis of numbers at all. This particular failure on Kendall's part results from an undue stress on an arithmetical analysis of the issue, which is itself the consequence of a lack of political realism, and especially of a curious unawareness of the significance of such matters as climate of opinion in determining whether we have, in fact, a democratic régime. While he is right in his argument that majority decision alone does not make democracy, it seems not impossible that such decision could be combined with the other elements he mentions, at least formally, without our having or preserving a democratic community.

Of his reëxamination of Locke, it is fair to say that, though it rests on close reasoning and shows considerable skill in argumentation, as well as close acquaintance with Locke's text, it is, nevertheless, neither a complete nor an entirely fair assessment of Locke's position. To examine texts closely is, no doubt, one of the duties of a scholar; but the performance of this duty alone may be harmful if it is not accompanied by an over-all vision. Mr. Kendall is atomistic and fails to see the woods for the trees. Undoubtedly his technique leads to emphasis on neglected aspects of

Locke's thought, as well as to raising many puzzling questions not previously raised. Yet some of those questions seem to be unnecessary ones, results of a display of argumentative acumen rather than consequences of an attempt at sympathetic understanding. Perhaps other scholarly commentators on Locke have, at times, put undue stress on the woods without noting the sometimes curious mixture of trees contained therein. Undoubtedly, too, some of them have taken a little uncritically certain traditions of Lockeian interpretation, and so have approached his work with preconceptions inimical to novel insights. Yet Kendall's own work suggests undue concern for novelty. While his analysis will necessitate qualifications of the extreme individualist interpretation of Locke, his own case is not proved, and leaves us still with the problem of reconciling divergent implications in Locke, previously noted by at least some scholars. Moreover it seems that the traditional view of Locke as a moderate, concerned with the triumph of common sense, and deliberately avoiding, if not always successfully reconciling, extremes, is more tenable than Kendall's own interpretation, and not incompatible with the evidence he adduces. And, while Dr. Kendall is fully justified in taking issue with previous scholars when reading of the text drives him to it, he seems quite unjustified in arguing that, because they have not been driven to his views, they have not really read Locke.

Lastly, it must be stated that, though connections between different parts of Locke's theory may be clear in Mr. Kendall's mind, he does not always make those connections clear to others. This is partly the result of poor writing: each chapter seems to stand alone; and in each chapter the sheer joy of close analysis and detailed criticism unfortunately leads to the obscuring even of the theme of that particular section. One is left with the feeling that Mr. Kendall would have done a greater service, both to himself and to his fellow-students, had he, on completion of the work, buried it for some months and then revised it for publication. As it is, it is wanting in perspective, is difficult reading, and lacks unity. Yet, with all this said, the work was worth undertaking, and students of Locke and of majority-rule democracy alike will find it necessary to take the author's findings into account. It is, moreover, to be hoped that Mr. Kendall will continue, as he proposes, his examination of the major contributors to the doctrine of majority-rule. One may also hope that, when he tackles Rousseau, next on his program, he will find some reason to qualify his present view that Rousseau stands largely where Locke is generally supposed to stand; just as Locke, as here interpreted, is essentially Rousseauian, according to what Mr. Kendall feels is the orthodox view of Rousseau.

THOMAS I. COOK.

University of Washington.

The British Constitution. By W. Ivor Jennings. (Cambridge: At the University Press; New York: The Macmillan Company. 1941. Pp. xvi, 232. $2.50.)

This is a small book (perhaps seventy thousand words) describing the central government of England. It begins with two somewhat lengthy chapters on elections and party politics, then discusses Parliament, the monarchy, administration, and cabinet government, and ends with two brief chapters on "Government in Wartime" and "British Democracy." There are eight excellent illustrations.

Studies describing and analyzing English political institutions have recently increased in numbers and excellence. Most of them, however, are very limited either in point of view or in subject-matter. Even admirable volumes such as those of Professors Keith and Laski usually have a circumscribed or a polemical aim. The works of Mr. Jennings, therefore, have come to occupy a unique position. They describe and analyze English governmental institutions in a manner scholarly, comprehensive, and dispassionate. It is true that Mr. Jennings has written no single treatise comparable with Bagehot's *English Constitution* and Lowell's *Government of England,* but his chief volumes taken together do for the generation of Attlee and Greenwood what Bagehot did for the generation of Gladstone and Lowell for that of Asquith. His *The Law and the Constitution* (1933) reëxamined the constitutional basis of English government. *Cabinet Government* (1936) and *Parliament* (1940)—both broader than their titles—describe the central government of England. A series of brilliant essays and articles (comparable with Bagehot's occasional writings) fill in the chinks.

In one immediately important respect, however, there is a difference. Hardly a page in Bagehot's collected works is less good than the best page in the *English Constitution;* and Lowell always writes like Lowell. This particular volume of Mr. Jennings, on the other hand, is not quite like his volumes mentioned above. Though always interesting and suggestive, it is casual in some places and "viewy" in others. It is not always good-tempered. Its possible value for students or as propaganda is therefore hard to assess. Scholars, however, will find Mr. Jennings' judgments stimulating.

The rather brief chapter on "Government in Wartime" is less informative and less vigorous than Mr. Jennings' brilliant articles on the same subject in the *Political Quarterly* (April, 1940, to March, 1941) and the *Yale Law Journal* (January, 1941).

Eugene P. Chase.

Lafayette College.

British Labour's Rise to Power. By Carl F. Brand. (Stanford University: Stanford University Press. 1941. Pp. xi, 305. $3.50.)

A chronic complaint of reviewers of books on the British labor movement is the lack of a definitive history of the Labor party. Professor Brand's eight studies included in this volume make a notable contribution toward filling a part of this gap. The book is the product of a competent historian who with care and diligence has studied the basic sources in both Europe and America. Some may puzzle over the inclusion of such a work in the Hoover Library series, but a glance at the contents will show how rooted in the ferment of the first World War was the spurt in strength of the Labor party between 1918 and 1924. The author's essays, except for the first on the conversion of trade unions to political action and the last on Labor-Communist relations, are limited to the war and immediate post-war periods.

British socialists may take exception to the title of the book, for between world wars Labor leaders have reiterated time and again that the party has never held *power*, but only *office*, and that with precarious Liberal underpinnings. Americans will understand properly Professor Brand's use of "power" as influence. The author wisely has treated his subject on a topical rather than chronological basis, although some of the topics logically fall into time sequence.

Most of the essays have previously been published in historical journals. Two of them, one on the founding of the Labor and Socialist International and the other on the Communists, have not been published before.

A student of the British labor movement may find little here that he did not know before, thanks to the Coles, the Webbs, Max Beer, and others who have chronicled working-class history. On the other hand, this volume must be called the most fully documented and most detailed account of the party's activities during the earlier World War. The narrative is a familiar one, and needs no repetition here. As yet, there are rather few parallels in World War II. No important Labor leaders refused places in the 1940 Churchill government; international socialist ties appear crushed under the Nazi yoke; the possibility of a negotiated peace seems far more remote than in 1916.

A dual shortcoming of the book should be mentioned. Reliance is placed upon reporting events and facts gleaned from published primary sources, to the exclusion of considering forces and ideas available from individual participants and other writers. For example, Professor Brand does not cite the excellent work of Professor William P. Maddox, *Foreign Relations in British Labour Politics* (Harvard University Press, 1934), which covers the period 1900–24 and provides indispensable interpretative material for understanding historical facts. The story of the Labor party, and perhaps

of other political phenomena, cannot be told in full without some account being taken of the psychological, political, social factors which lie behind events and actions; the student of politics also desires information on the techniques and machinery employed. The fact that such materials receive scant treatment in *British Labor's Rise to Power* does not mean that it is inadequate as a history. Professor Brand has written a fine account of important aspects of Labor party history, especially in the period 1914–20.

DEAN E. MCHENRY.

University of California, Los Angeles.

The Cambridge History of the British Empire. GENERAL EDITORS: J. HOLLAND ROSE, A. P. NEWTON, AND E. A. BENIANS. Volume II. The Growth of the New Empire (1783–1870). (Cambridge: At the University Press; New York: The Macmillan Company. 1941. Pp. xii, 1068. $10.50.)

This is the fourth volume in this monumental series which the present reviewer has been privileged to discuss professionally. Seven of the eight volumes have now appeared. The first three are specifically historical, covering, in turn, British imperial history to 1783, from 1783 to 1870, and subsequent to 1870. Volumes four and five are devoted to India, and the remaining three to Canada and Newfoundland, Australia and New Zealand, and South Africa, respectively. The approach throughout is historical, but the resulting problem of coördinating the general portrayal of developments in the earlier volumes with the more particular discussions which follow has been handled with distinctive ability and success. In fact, the whole project constitutes a conspicuous example of organizational achievement in history writing. The set, of course, is indispensable to every college library, not merely for the history department, but wherever comparative government and international relations figure in the curriculum.

The specific volume now under consideration covers "The Growth of the New Empire." The beginning of this period was signalized by the fresh start in colonial policy consequent on the surrender of a large part of the old empire by the treaty of 1783. Speaking broadly, the narrative is here carried forward to the beginnings of the "Imperialist" reaction to decentralization within the Empire. The salient feature of this era was the development of autonomy within the Dominions—political, constitutional, economic—the crucial issues in each case being fought out first in Canada. It is a chronicle unique in the history of colonial government, and especially instructive to the student of representative government as such. The story is developed in detail in the volumes on the particular Dominions. Here its relation to the general picture is set forth. Correlatively,

also, during this period, there was the development of the "Dependent Empire," affording a wealth of data regarding the administration of "exploitation" rather than settlement colonies, and the international factors involved.

This aspect of British imperial history and of colonial problems from the Mother Country standpoint receives major attention in the present volume. The tasks involved in its preparation have been intrusted to twenty contributors. The arrangement of chapters, as would seem to be most satisfactory in a work of this description, is a combination of the topical and chronological, which incidentally facilitates its use for reference purposes. The work is characterized by the encyclopedic scholarship and careful documentation one has learned to expect in a Cambridge series. Special mention is due the detailed classified bibliography of 120 pages. There is also a 64-page index.

The reviewer would like to utilize this opportunity to impress a point which has been gaining some recognition within the last year or so. Apart from the United States and Britain themselves, the noteworthy remaining democracies today are the British Dominions. Although the apparent exigencies of text-book writing have heretofore limited this field of comparative government to about half a chapter, why not quadruple the emphasis from now on? From the standpoint of international organization, the British Commonwealth is a League of Nations which actually works. What are the bases and methods of coöperation, and the historical background which has mitigated rather than intensified the causes of friction? To the student of comparative political institutions, there is no more instructive field than the internal government and politics of the Dominions. For example, we find here federal governments applying the conventionally operated cabinet system, "limited" governments with written, judicially enforced constitutions, yet with reliance upon a background of custom and historical precedent to a degree puzzling, to say the least, to the American student.

It is the essential importance of this historical background in studying the governments of the British Commonwealth—as contrasted, for instance, with the made-to-order democratic constitutions of unhappy memory in post-war Europe—which renders such a work as that now under consideration (the most complete, up-to-date, and best organized of its kind) so essential to teacher and student within this field.

A. Gordon Dewey.

Brooklyn College.

The Assembly of the League of Nations. By Margaret E. Burton. (Chicago: University of Chicago Press. 1941. Pp. xi, 441. $4.50.)

This is an excellent book. Miss Burton has studied the documents, but she has also spent considerable time in Geneva and has observed several

Assemblies at first hand; she knows the Assembly and she knows the League of which the Assembly is [was?] but a part. In eleven chapters, she has given us a thoroughly readable and accurate account of the origin, establishment, organization, operation, special problems, and general development of the League Assembly, an account which, in view of the part played by the Assembly, becomes almost a history of the League of Nations during these twenty years.

The author's painstaking review of the various plans for a League of Nations shows that it was actually the British Foreign Office which seemed first to envisage a League as something more than an instrument for preventing war, which proposed that it should also be an instrument for coöperating "continuously and regularly in all matters of common concern," which foresaw many of the problems later given major time by the Assembly (slavery, white-slave traffic, health, industrial and trade conditions, etc.), and which suggested an organ very much like the Assembly. At any rate, the Assembly was established, but without complete or clear provisions with respect to its organization, its procedure, or even its functions. Since it was a new and somewhat unique organ of international government, all of these matters had to be worked out, and, in view of the fears and suspicions, as well as the needs, had to be worked out most cautiously. Miss Burton's account of the First Assembly, which was confronted with this task, of its problems and its personalities, is one of the best in the book. It is also a demonstration of what can be accomplished by men of vision, courage, good will, and good sense.

Other chapters particularly illuminating are those dealing with the general character of the Assembly, the committee system, and the Assembly as an opinion-forming and policy-making body. There is also a full chapter on the unanimity rule, revealing the numerous ingenious practices and devices by which the worst effects of that ancient rule were avoided by the Assembly and majority government in effect obtained, although of course not in every instance; this chapter alone is an indication of how international government may evolve through compromise and reconciliation of the apparently contradictory principles of sovereignty and mutual coöperation, given a desire for actual coöperation rather than for conflict. There is in all these chapters a good picture, not only of the Assembly, but of the entire League in operation, and especially of the other principal organs, the Council and the Secretariat, their relations with and their influence upon the Assembly.

It is a matter for regret that in a book as good as this, and one presumably written especially for American readers, there is no systematic treatment of the relations of the United States to the Assembly. There are occasional references to the United States, but quite inadequate on any point, and on some exceptionally important matters, such as Manchuria and the Chaco, chiefly by footnotes (p. 330, n. 56; p. 334, n. 3 and 4;

p. 337, n. 14). There is no mention, for example, of Hugh Gibson's statement to the Disarmament Conference with respect to the importance of the Assembly's consideration of the Manchurian affair, deleted from the official record but nevertheless presumably indicative of our attitude; nor of Secretary Hull's note on the occasion of seating Mr. Leland Harrison on the Assembly's Far Eastern Advisory Committee, advising members of the League on their obligations and on what they might expect from us. These and other events are important indications as to the nature and helpfulness of our own coöperation, and certainly as to the problems of the Assembly, important enough for thorough treatment in a separate chapter.

There is an occasional statement which, if not technically inaccurate, may carry faulty implications. The assertion that "the Council's regular sessions were four during the early years and later only three" (p. 126) may cause some readers to forget that the Council found itself obliged to hold an average of about five sessions a year instead of the minimum number required by its rules. Similarly, the statement that the Sixth Committee had in 1937 a "membership" of 145, but that on some propositions only 26, 27, and 31 votes were cast (pp. 140–141), fails to note that included in the total membership list are the substitute delegates, who may have been present in the committee room, but who certainly did not participate and should not be counted if the principal delegate was present. These are minor matters, however, and the book is, on the whole, almost a model of excellence. The place of the Assembly in international government is well summed up in the last paragraph: "Whether or not the Assembly of the League of Nations is ever again convened to meet in the *Palais des Nations* at Geneva, it has done much to lay down the lines for the representative body of the international organization of the future. Little need be torn down; much firmly built and well-tested structure may well serve as the framework of the future representative body either of the League or of its successor."

CLARENCE A. BERDAHL.

University of Illinois.

The United States in World Affairs; An Account of American Foreign Relations, 1940. By WHITNEY H. SHEPARDSON AND WILLIAM O. SCROGGS. (New York: Published for the Council on Foreign Relations by Harper and Brothers. 1941. Pp. xiv, 400. $3.50.)

In these hectic days, when one's train of thought may be derailed by the swift current of passing events, this book should be at the elbow of every student of American foreign policy. It is a fascinating chronology of 1940, an exceedingly crucial year in American history during which we passed from the era of the "phony" war and complacency to the terrors of the Blitzkrieg and the resulting all-out aid for democracy. During the

first stages of the war, with a curious serenity inspired by the impregnable qualities of the Maginot line, we still clung to the concept of neutrality. Even when Finland felt the invader's heel, we were not disposed to render direct aid, and what we did give was far too late and far too little. With the invasion of the Low Countries and the fall of France, however, the United States became both "shocked and angered." Cognizant, at long last, of the Nazi threat to our democratic way of life, our people called for action. Congressional economy gave way before the demand for a two-ocean navy, a greatly increased army, a huge air force. The Monroe Doctrine was invoked to prevent the transfer of American territory from one non-American power to another. Appeasement was replaced by a sterner stand against Japanese imperialism in the Pacific. Defense ties between Canada and the United States were strengthened. By the end of the year we had completely renounced any thought of neutrality and had promised to serve as "the great arsenal of democracy." It was not clear, however, that the American people fully realized the implications of their decision, since, in a world dominated by power politics no nation should depart from the beaten path of neutrality unless it is ready for any eventuality—including war. Because we did not want to fight, we were, in effect, on the horns of a serious dilemma. Should we run the risk of a war we did not want in order to insure an Axis defeat? Or should we carefully avoid the hazards of an immediate war, even at the colossal expense of a Nazi victory? It might be that we could not have our cake and eat it too.

This, in brief, is the story the writers have to tell. And they tell it exceedingly well in a book that combines the qualities of scholarship, objectivity, and reading interest. While the reader will find it a splendid review of world events in 1940, major emphasis is, of course, focussed upon the rôle of the United States in the war. The bibliography, the maps (may we have still more maps?), the chronology of events, and the appended documentary materials—including a digest of Gallup polls pertaining to foreign affairs—should prove most helpful. The book is the ninth in the annual survey of "The United States in World Affairs" sponsored by the Council on Foreign Relations. At a time when we need to understand thoroughly where we have been as well as where we are going, it appears as a most welcome and worth-while supplement to its eight predecessors.

FRANCIS O. WILCOX.

University of Louisville.

Commission to Study the Organization of Peace: Preliminary Report and Monographs. (New York: Carnegie Endowment for International Peace. 1941. "International Conciliation," No. 369, pp. 193–531.)

This is perhaps the most important issue of the *International Conciliation* series ever put out. It is, in effect, a handbook of international politics and government, as of today, along with an analysis of the major problems

involved in the reëstablishment of peace, and a statement of the principles which should govern its organization. This large brochure is a symposium of contributions from some twenty-five experts, and is, incidentally, an example of a very successful collaborative effort, though there are inevitable disparities in the quality of the parts.

The spirit pervading the volume is indicated by a statement in the preliminary report of the Commission in which it hopefully and courageously envisages "a world in which the forces of applied science and the diffusion of knowledge offer to all men and nations a plane of living, a freedom and richness of spiritual, cultural, and economic attainment that can scarcely be imagined at the present moment." The world, as this group sees it, is confronted with two alternatives: the organization of the world by conquest, or by consent; and the time is anticipated when man will abandon reliance on brute force and "will again profess his faith in reason."

Extreme positions are avoided. The nation-state is recognized as the dominant unit of world society today, and the transition from this to ultimate federation is seen as an inevitably slow process. We cannot demand the complete abandonment of national sovereignty in one leap. "The world must evolve from League to federation."

The spirit of Immanuel Kant pervades the contribution of Dr. James T. Shotwell, who sees the forces of modern civilization, almost in spite of themselves, working inexorably for peace. Science and interdependence of peoples provide the basis for the peace movement, and "science is the final and invincible ally of peace." To a degree, this spirit pervades all the essays, in the sense that all assume that the imponderables argue in favor of constructive measures, and that the odds are in our favor if we act intelligently and forcefully. But vigorous action is regarded as essential. Peace is not a static, negative concept or condition. Charles G. Fenwick and others stress the point that it is always dynamic, and that the rules of law must "correspond with the changing conditions in the relations of states."

Economic factors are regarded as among the basic elements in a peaceful future. Eugene Staley lists three fundamental principles: (a) access for all to raw materials and markets; (b) internal economic stability, to prevent disastrous booms and depressions; and (c) progressive economic development, to maintain standards of living and to deal with acute economic problems as they arise. Alvin Hansen appropriately warns against assuming that economic prosperity would inevitably follow the elimination of trade barriers, for this would not, of itself, solve the depression problem, the fundamental cause of which he attributes to "the fluctuation in the rate of real investment."

International political institutions are analyzed and appraised by Benjamin Gerig, Quincy Wright, Clyde Eagleton, and others. The close

tie-up between collective security and provision for peaceful change is emphasized, and the futility of economic sanctions if we announce in advance (as in the Italo-Ethiopian case) that we will not use them if they really inconvenience the aggressor.

It is too bad that the volume does not have an index and a bibliography, but Dr. Shotwell's Commission has done a very good job, and the Carnegie Endowment deserves our thanks for making the report available in this very inexpensive form. The book should be read by all who exercise their minds on the thorny subjects involved in the peace settlement after this war.

G. Bernard Noble.

Reed College.

The Spoil of Europe; The Nazi Technique in Political and Economic Conquest. By Thomas Reveille. (New York: W. W. Norton and Company. 1941. Pp. 344. $2.75.)

In a brief foreword, Raymond Gram Swing vouches for the reality and integrity of the author, who, because of his official position, must remain anonymous. We are told "that he knows ten languages, German included, and that he has long been associated with leading persons in control of the economic, financial, and political life of Europe." The author states that the book is largely built up on official German accounts, pieced out by available American and English sources. The volume unfortunately is not well documented. There are virtually no footnotes, and the brief source references for some of the chapters in an appendix are inadequate if one desires to trace any particular statement.

In order to explain the technique of conquest, the author discusses Nazi ideology and devotes four chapters to a description of the economic organization of the Reich itself. Some very useful charts of the different estates are given. The descriptive account is informative, although it makes difficult reading. The main portion of the book is a detailed exposition of how all districts incorporated into the Reich or under occupation are administered for the advantage of Germany. While following a general pattern, the procedures have varied from country to country. Tables are provided showing the different currency valuations in terms of Reich marks. In general, there has been an effort made to raise (in a few cases, lower) the wage and price level to that of Germany. In the case of the Poles and Jews, some of this increase in wages is taken back in the form of a special tax, *Sozialausgleichsabgabe*. The author maintains that the costs of the armies of occupation are not figured on the basis of actual expenditure, but are approximately equal to the amount of money the occupied country had been spending on its war budget. The unused balance of these occupational charges is used to buy up shares, usually

about forty-nine per cent of the stock, in various businesses. Berlin is fast developing into a multiple clearing-house for the trade of the Continent, thereby eliminating the need for a free exchange medium.

The book is chock-full of information. The amount of detail furnished on the variations of procedure from country to country and on what has happened to leading industries and banks in each is almost incredible. In the final chapter, the author is less happy when he seeks to account for Hitler's failure to invade England, for Hess' trip to England, and for the invasion of Russia. It hardly gives credit to the planning necessary for a Blitzkrieg to maintain that the Nazi invasion of Russia on June 22, 1941, was a gamble determined on after Roosevelt made his statement to Congress on the sinking of the *Robin Moor* on June 20. The reviewer also cannot agree that the "first and foremost" result of this invasion was that "it averted an immediate and open declaration of war by the United States."

E. C. Helmreich.

Bowdoin College.

National Unity and Disunity; The Nation as a Bio-Social Organism. By George Kingsley Zipf. (Bloomington, Indiana: The Principia Press, Inc. 1941. Pp. xv, 408. $3.50.)

The author of this book purports to apply to human group-behavior "the same ruthless objectivity" as that of a biologist. Regarding a nation as "a natural bio-social entity" comparable to a colony of ants or bees, he sets out "to discern . . . the fundamental drives that govern our behavior."

The "law of nature" discovered and elaborated is the harmonic series, "1, 1/2, 1/3, 1/4, 1/5 · · · 1/n." Nature, he believes, is specially fond of this set of relationships, and American cities, in terms of population, presumably fall into some such relation to each other. He applies the formula to other selected political areas of the world. When the harmonic series works out perfectly (which it never does, in fact), the economy of the political unit in question is in proper balance. If the harmonic series is skewed, then there is an unbalance in the economy. Applying this "law," the author discovers that India is "exploited by a social-economic parasite," and that Germany suffered disastrously from the Versailles Treaty, but that, as a result of her acquisitions in Austria, Czechoslovakia, and Poland, she has been approaching normality. The British Empire, on the other hand, although a vastly larger economic unit, is shown to be in a state of "unbalance." The conclusions in each case are largely subjective, since the objective data presented would scarcely seem to justify them.

The same "law" is applied, with limited success, to income groups, and we are told that Nature believes, not in "the greatest good of the great-

est number," but in the "greatest good for the nation," the population of which consists of the "*élite* and the pariahs." Thus, democratic equality is presumably ruled out by Nature. Pursuing the "spirit of passionate objectivity," the author prescribes an isolationist foreign policy for the United States, although no graphs are used to demonstrate the solution. Specifically condemned by him is the "Committee to Defend America by Aiding the Allies," which, in his judgment, is seeking to interfere with the beneficent operation of Nature's laws and with the work of Adolph Hitler. Altogether, the doctrines smack strongly of fascism, and they are not saved from this association by the adornment of "scientific objectivity."

G. Bernard Noble.

Reed College.

Boundaries, Possessions, and Conflicts in Central and North America and the Caribbean. By Gordon Ireland. (Cambridge, Mass.: Harvard University Press. 1941. Pp. xv, 432. $4.50.)

Together with the preceding volume, by the same author, covering the countries of South America, this work completes a very valuable compendium of the factual record of international boundary disputes in the Americas. In a form not too difficult for the interested reader, there is presented the historical and legal record of each international boundary—claims, arbitration agreements and decisions, and treaties—with citations that are certainly adequate, if not unnecessarily lengthy.

The brief introductory sketch of the political history of each state may be helpful to the reader. More welcome, to scholars as well as to casual readers, would have been an introductory statement for each boundary study defining the areas in dispute. As it is, the reader must first wade through lengthy official claims to find out what the argument was, or is, about.

Since the work is concerned solely with territorial problems, it is most unfortunate that neither the author nor his map-maker appears to have any knowledge of either principles or techniques of geographic study of boundaries. A great amount of material presented in well-nigh incomprehensible verbal description could far better have been presented on maps. Even for purposes of orientation, the reader will find little help in the inadequate, amazingly amateurish, and frequently faulty maps that were specially prepared at the expense of Harvard University—an institution with which is associated, in the Institute for Geographical Exploration, one of the foremost cartographers in the country.

Shorter sections of the work are: the useful listing of the islands adjacent to North and Central America, including many that are but little known, with a brief statement of the record of sovereignty of each; and a

list of existing treaties of Central American countries with each other and with other Latin American states. There is a full index.

RICHARD HARTSHORNE.

University of Wisconsin.

The Mysterious Science of the Law. BY DANIEL J. BOORSTEIN. (Cambridge, Mass: Harvard University Press. 1941. Pp. xviii, 257. $3.00.)

The subtitle describes this book's purpose and achievement quite accurately when it tells us, in the style of the period, that it is "An Essay on Blackstone's Commentaries, Showing How Blackstone, Employing Eighteenth-Century Ideas of Science, Religion, History, Aesthetics, and Philosophy, Made the Law at Once a Conservative and Mysterious Science." Dealing separately with such topics as science, nature, history, reason, aesthetics, liberty, each chapter opens with a survey of the general temper of the period. First poets, novelists, and essayists, dictionaries and popularizers of scientific works, are quoted at some length. Pictures of the time which refer to the various abstractions in a characteristic way are reproduced. Then, for each category, the author turns to Blackstone's ideas as expounded in his *Commentaries*. The comfortable breadth of this environmental description, novel in its subdivision rather than in the historical material, is attractive and stimulating. In this manner, Blackstone's admiration of nature and his confusion of its meanings, especially of *is* and *ought*, primitive perfection and perfection through progress, paradise lost and paradise ahead; his glorification of reason and his admiring capitulation before obscure elements of traditional institutions; his enhancing of natural rights and quietistic confidence that they are incorporated in English law; his love of beauty, which is clear and orderly, and of the sublime, which is obscure and disordered—these and many other contradictions regain much of the common-sense appeal and universal character which they had at his time.

The effect of the present analysis is less disparaging today than it would have been some thirty years ago. True, we are complacently aware of the confusion, ready to refute and reject it, but we are no longer confident that negative analysis disposes of the problem. Contradictions seem to have some origin deeper than we are yet able to describe. Despite his impeccable exposure of the confusion aspect, the author never leaves us without a positive interest in the spirit of the time and a respect for its errors. Only at the end, when out of all those conflicting ideals there emerges Blackstone's glorification of property, does he become frankly ironical.

The author's Blackstone is America's Blackstone, deeply influential on the conceptions dominant at the time of the Revolution, when his reference to nature and reason as the ultimate tests of the validity of rules seeped to all the intelligentsia through lawyers nourished on the *Commen-*

taries. Mr. Boorstein omits mentioning, however—and in this omission again he follows the spirit of his hero's period—that Blackstone also laid the foundation of the antagonistic doctrine which ascribed to statute law primacy over natural law, to Parliament over common law, and thus ultimately re-enthroned Hobbes' concept of sovereignty above Locke's inalienable natural rights and above Sir Edward Coke's dicta on the preeminence of natural law. There is some indirect allusion (p. 158), but the main passage is not mentioned. It reads: "But if Parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it; and the examples usually alleged in support of this sense of the rule do none of them prove that, where the main object of the statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government."

Here is another mystery in the mysterious science of law, not solved either by the author, who incidentally reveals his scepticism (pp. 139, 191), or by the author's author. The latter tried to escape the snare by teaching that the individual was free to disobey unjust law, taking the penalty upon himself, or to obey it with regret; "and his conscience will be clear, whichever side of the alternative he thinks proper to embrace" (p. 158). But if this was so, why then should the judge not have the same choice? Why should positive law if unjust be binding upon him? Today, Blackstone teaching the sovereignty of positive law has long outrun Blackstone glorifying natural rights. Steeped in the former doctrine rather than the latter, modern lawyers have reason to look with some amazement at the consequences for judicial ethics in totalitarian countries. Time seems ripe for Locke *redivivus*, or at least for a positive international due-process clause (deprived of property glorification), although the obstacles, theoretical as well as practical, are formidable. However that may be, Mr. Boorstein's book, wisely stopping short of such reflections, must be warmly recommended, especially as supplementary reading in law schools and political science departments. It is thoroughly annotated and in addition contains a glossary of legal terms for laymen.

ARNOLD BRECHT.

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Crime and Its Treatment; Social and Legal Aspects of Criminology. By ARTHUR EVANS WOOD AND JOHN BARKER WAITE. (New York: American Book Company. 1941. Pp. ix, 742. $3.50.)

This volume, which is a part of the American Sociology Series edited by Kimball Young, is designed as a textbook on the subject of criminology. Written in collaboration between Arthur Evans Wood, a professor of

sociology, and John Barker Waite, a professor of criminal law, it goes far beyond the usual textbook in this field in its attempt to effect a synthesis of the sociological and legal phases of the crime problem. Since any fresh insights concerning human behavior which arise from the social sciences must be accepted and implemented by the law before they can be available for social control, the consideration given in this volume to the method and content of the criminal law seems amply justified. Not a little of this legal discussion, it should be mentioned, accords with points of view that one finds in modern psychology and sociology. All of which adds to the value of the book. Although the legal contribution in this volume is important, it should not be overemphasized; of the twenty-five chapters, only eight are directly concerned with the legal aspects of crime.

The other seventeen chapters are concerned in part with such matters as (1) the problem of crime in relation to sociology and other social sciences; (2) criminal statistics; (3) the case study approach to problems of crime and delinquency; (4) crime and the community; (5) environmental factors, specifically considered; (6) descriptive characteristics of criminals; (7) the psychiatric status of criminals; (8) juvenile delinquency and the juvenile court; (9) the theory and practice of punishment; (10) the rise and development of the prison system; (11) problems of penal institutions; (12) extra-mural forms of corrective treatment, including probation and parole; and (13) the outlook for crime prevention.

Professor Wood, who has been chiefly responsible for these chapters, examines the problem of causation with great care and objectivity. In doing so, he gives the student an opportunity to appraise the best views arising from recent studies in this area. His analyses and evaluations concerning penology and prevention are also well considered and presented with clarity and restraint. His contribution should enable the student to get a well-balanced view of these baffling social problems. In considering the history and operation of our present criminal codes, Professor Waite speaks as an avowed critic of outworn legal rules. As he sees it, our criminal law is in need of considerable modification both in practice and in interpretation, if it is to be brought into line with modern reason and scientific knowledge. He is insistent in his demand that the law forego its ancient punitive sanctions, and substitute therefor the objective of defending the community. His analysis of the legal aspects of crime should be most helpful to the student of criminology. In short, this collaboration would seem to have produced a very happy result. Professors Wood and Waite have moved along a new line to the very great profit of the present-day student of criminology. This volume also contains some well selected statistical tables, and a satisfactory index is appended.

F. R. Aumann.

Ohio State University.

American State Debts. By B. U. Ratchford (Durham, North Carolina: Duke University Press. 1941. Pp. xviii, 629. $5.00.)

That state debts have been mounting since 1917 and that state financing of bonded or other indebtedness has frequently been ill conceived, poorly administered, and concluded unfortunately, with repudiation or difficult refinancing, is well known. Encompassed within the covers of a single book, however, the history of state debts from colonial times to the present brings a clearer perspective than it has been possible to secure from the numerous special studies of the past. Possibly this is the chief contribution of this new volume. It makes interesting, even if, of necessity, none too rapid, reading for the student of public finance, and carries a lesson for the future.

The colonial period, Revolutionary debts, and federal assumption are first reviewed, with circulating notes serving not only as currency but also as a method of borrowing without taxation. The remainder of the book the author divides into five periods. From 1820 to 1840, state bonds were issued to finance canals, railroads, and banks, rather disastrously. In the second period, 1845–60, railroad finance continued rather more successfully and might have resulted in little serious loss if the Civil War had not intervened. In the Civil War period, Northern and Southern states borrowed primarily to finance the war, the former to be reimbursed by the federal government, the latter to face repudiation. In the fourth period, Reconstruction, state borrowing in the South was corrupted and used with devastating effect upon all concerned.

The fifth period, from 1910 to the present, "is marked by borrowing for many purposes, but mainly for highways, veterans' bonuses, and unemployment relief." In volume, it surpasses all previous periods combined; and to this period, sixteen of the twenty-five chapters are devoted.

As for the reasons for state indebtedness, "the one purpose which has dominated state borrowing since 1820 has been the financing of transportation." "Nearly one-half of all state debts incurred since 1900 have been for the purpose of building roads and bridges," Indeed, the automobile may have been responsible for about four times as much indebtedness since 1910 as the next two causes of state borrowing, i.e., war and relief of unemployed. Other purposes have been important, though much less in volume. The creation of loan funds, condemned by the author, has been a persistent reason for borrowing from colonial times to the present, as has the funding of current deficits at frequent intervals.

In dollar volume, state borrowing was low prior to 1860 in comparison with recent years. From 1919 to 1938, "the states borrowed several times more than they borrowed in the preceding one hundred and thirty years." After inactivity during the first World War, the states borrowed in 1921, "chiefly for highways and soldiers' bonuses, more than $270,000,000.

This total was more than three times as great as any pre-war total and, with the exception of the year 1934 ($300,000,000), has not been exceeded since that time," the total declining steadily to reach, in 1938, the lowest point in ten years.

There are several case histories of individual states, as for example the Virginia debt, Arkansas and Tennessee as illustrations of overborrowing or bad debt administration, and the rural credit experiments in North and South Dakota and Minnesota. The chapters are well documented with numerous references for further details on other states.

The last ten chapters give adequate attention to constitutional debt limitations, court interpretation thereof (including the special fund doctrine), the enforcement of state bonds, a history and critical analysis of state revenue and limited obligation bonds, and proper administration of state debts. Most readers will probably agree with the recommendations for a sound debt policy, based on the experience recounted in earlier chapters. Students of public finance will find the volume very helpful in its coverage and careful analysis. To all public officials who may hereafter have responsibility in connection with state debt policies, it can be recommended as profitable reading.

FREDERIC H. GUILD.

Kansas State Legislative Council.

Local Planning Administration. EDITED BY LADISLAS SEGOE. (Chicago: Institute for Training in Municipal Administration. 1941. Pp. xii, 684. $7.00.)

Segoe, a professional city planner, together with six collaborators including Walter Blucher, executive director of the American Society of Planning Officials, prepared this thoroughgoing summary of the literature on planning administration in the United States for the Institute for Training in Municipal Administration, a home study in-service-training program conducted by the International City Managers' Association. Unfortunately, the volume does not include the lesson questions and the suggested readings; and another omission of major importance, less understandable, is an index.

According to the preface, the original plan of the book was laid out by Blucher, who, because of pressure of other activities, was compelled to delegate the task to Segoe, well-known as director of the Urbanism Committee of the Natural Resources Planning Board. The volume is broad in scope, and fills a very important gap in the literature of public administration. Except for the fact that planning does not ordinarily include a discussion of fire, police, personnel, and relief programs, the book is the most comprehensive general work on municipal administration known to the reviewer. It has real meat in it.

One or two points may be commented upon. The omission of any reference to Walker's *The Planning Function in Urban Government* is a glaring fault. Walker's findings and conclusions are discussed, but no mention is made of the book. Segoe has a tendency to draw illustrations and proof from Cincinnati, his home town. It is the reviewer's opinion that better illustrations for some points are to be found in the publications of national, regional, state, and local planning agencies. The chapter on population relies upon the Wisconsin studies, which are not the best in the field, according to the population experts (see special report of the National Resources Planning Board on this subject). Although many of the 1940 census figures are now available in the form of releases, they were not used.

Written by professional planners, the volume has many lessons for academic political scientists. While technical in parts, it is nevertheless comprehensive, realistic, and challenging. Political scientists whose only contacts are students and colleagues do not write such books.

HAROLD F. GOSNELL.

University of Chicago.

The City-County Consolidated. By JOHN A. RUSH. (Los Angeles. Published by the Author. 1941. Pp. xviii, 413. $3.00.)

Much useful and interesting information can be extracted from this book by one willing patiently to endure unto the last. Devoting attention to a phase of metropolitan organization which has been denied the attention it seemingly should command, the volume has been prepared by John A. Rush, author of the constitutional amendment in Colorado which created the consolidated city and county of Denver in 1902.

An historical résumé of the origins of borough and municipal government serves as a preface to the analysis and presentation of the problem of what the author calls the "city-county consolidated"—those instances in which territorial extent coincides and boundaries become coterminous for two units, served by one government seized and possessed of what are termed city and county functions respectively. Examples are marshalled rather skillfully to illustrate and buttress the author's contention that this type of local and municipal organization is the natural, fundamental form in which the municipal or metropolitan level should be cast, so as to be moulded into counterparts of the early institutions of free Anglo-Saxons.

Attention is given to present-day New York City, to New Orleans, Philadelphia, Baltimore, San Francisco, St. Louis, Denver, and a couple of dozen Virginia towns as types of this particular institutional structure. Adequacy is attained in the treatment of each city-county consolidated. The style is provocative and fluent; the thought is generally lucid; and the book is well-written.

The author believes whole-heartedly in home rule at the municipal level; he is utterly sincere in his serious and conscientious advocacy of the right of municipalities to govern themselves. Nevertheless, his reasoning upon this point descends on occasion to mere sermonizing and to exhortatory exclamations at the wonderful contributions to the inherent right of self-government by the Anglo-Saxons and the English. By a logical *tour de force*, all of the sinister, corrupt, meddling, bad men of politics, all of the mean motives and sins of party strife and faction, become severed from their institutional matrix, political processes in general, and fastened solely and exclusively upon state governments.

Thus, bad men in state governments have used the courts to develop false doctrine to the effect that the city is the creation of the state, deriving its powers therefrom, even under the medium of home rule provisions in state constitutions. Sin is thus successfully opposed by its attribution to another governmental level.

Liberal in his recognition of the waywardness of the courts, cogent in his argument for the city-county consolidated, the author ensnares himself in an apparent condemnation of the council-manager form of government by using another mangy sheep as an example—Pendergast-controlled Kansas City under that type of municipal government.

These points are mentioned to indicate that this is altogether a book to be read patiently with the hope of reward. The scholarly aids—index, bibliography, table of cases, and appendices—are adequate.

CHARLES W. SHULL.

Wayne University.

The Number 1 Municipal Law Problem: Home Rule. Report of the City of Chicago Law Department for 1940. (Chicago: Chicago Law Department. 1941. Pp. 150.)

The Government of the City of St. Louis. Summary Report of the Mayor's Advisory Committee on City Survey and Audit. (St. Louis: Governmental Research Institute. 1941. Pp. 318.)

The report of the City of Chicago Law Department for 1940 should give new impetus to the home rule movement which in recent years has lagged. The general arguments for home rule are presented, with special emphasis on its need in solving Chicago's problems. There is also an extensive bibliography on home rule and the text of the pertinent constitutional provisions in all states. Many illustrations are given to show that by the principle of legislative control Chicago has been hindered in meeting effectively the problems arising in that city. While the report offers no profound or new contribution on constitutional home rule, it does by a study of the specific problems in one city make a strong case for freedom for cities from legislative domination. Hope for progress in local adminis-

tration lies in allowing local officials to meet their problems through their own originality and imagination, rather than through legislative guidance and domination. After reading the report, one is convinced that legislative control has hampered services, prevented economies, and added to the financial difficulties of the city of Chicago and other local governments in Cook county. While the Chicago problem is emphasized, the report points out that the need for home rule applies to other cities in the state.

The survey of the city government of St. Louis which was made by Griffenhagen and Associates and the Governmental Research Institute of St. Louis, under the direction of the latter organization, was an outgrowth of the appointment by the mayor of an Advisory Committee on City Survey and Audit. The survey included studies of the organization, policies, procedures, practices, the value and cost of services rendered, and the expenditures involved with respect to all municipal governmental departments and agencies subject to the control of the mayor or the council. The report lists 900 recommendations; hence there is little discussion of general principles or fundamentals. An action program is presented in the report, much of which will have little interest for persons who do not live in St. Louis. As illustrative of the detailed suggestions, the report recommends that in one of the city hospitals a window washer be employed, and that a floor scrubbing machine be purchased; and that in another hospital certain sterile articles that are not now dated be so marked, and that food garbage be examined to prevent losses of silverware. The report also considers broader aspects of reform such as the powers and duties of the mayor, organization of the council, personnel administration, and the organization of administrative departments, with recommendations in each case. The criticism made of many governmental surveys, that they are stereotyped recommendations without adequate consideration of the local problem, cannot be made of this one. It is a "tailor made" report, based on thorough consideration of local problems.

These two studies supplement each other. The Chicago report indicates the difficulties a city has under strict legislative control. The St. Louis survey indicates how local problems can be met under constitutional home rule. The report indicates that all has not been well in St. Louis; but the remedy and the responsibility are in local hands, few of the changes recommended requiring state legislation.

CHARLES M. KNEIER.

University of Illinois.

Government Control of Business. By HAROLD D. KOONTZ. (Boston: Houghton Mifflin Company. 1941. Pp. xiv, 937. $4.50.)

A few years ago there were not more than two or three general textbooks in the field of government control of economic enterprise. This has

now become the average annual production. The pattern of these texts has been surprisingly, and disappointingly, uniform. The book here reviewed conforms to the accepted pattern. After an introductory section on "The Problem of Control," there follow sections on transportation, public utilities, monopoly and competitive practices, financial and exchange institutions, the extractive industries, labor, and government promotion and ownership of business.

As stated by Professor Edgar S. Furniss in an editor's introduction, the aim in each field of enterprise covered is to present a description of the existing rules and regulations "against a background of historical development and in the light of sound economic principle." Professor Koontz has conscientiously pursued this aim. Each section contains a mass of factual material, and yet is compact, well-organized, and clearly written. The author is thorough, accurate, and objective. Within the limits of what he has attempted, he has done a competent job.

In spite of its excellent qualities, the book has serious shortcomings. In his attempt to cover so much ground, the author has not been able to avoid making it somewhat encyclopedic. The longest section, almost twice as long as the second longest, is that dealing with the regulation of transportation agencies. In approximately 200 pages, the author describes the evolution of railroad regulation; the regulation of railroad rates, service, safety, labor, combinations, securities and finance; the regulation of motor, water, pipe-line, and air transport; and concludes with a chapter on national transportation policy. One grows weary of the parade of summarized statutes, regulations, and cases. The other sections are, if anything, even more condensed. There may be some value in having students learn a mass of factual material, but in the reviewer's opinion this will not of itself give them a very deep understanding of the nature and significance of government intervention. Nor can this understanding be supplied by occasional appraisals of governmental policies in the light of the author's concept of sound economic and social policy, mature and humane though this concept be.

One hesitates to criticize an author for not doing what he has not attempted to do. This can hardly be avoided, however, in the case of a textbook which omits or neglects a number of the most intriguing and significant aspects of its problem. I do not see how it is possible to give students any real understanding of the relation between government and economic behavior without something more than incidental consideration of the ideological background, or what Thurman Arnold terms the "folklore," surrounding and conditioning the evolution of this relation. Nor does it seem to me that anything like sufficient attention is paid to the governmental institutions and procedures of control, particularly with reference to administration. The problem of sanctions is almost wholly

neglected. In short, what might be called the "process" of regulation is nearly lost sight of in the attempt to include all important substantive material.

It is only fair to say that these comments are no more applicable to this text than to the others in this field. The authors seem determined to "cover" the subject, at the cost of a more penetrating analysis. They have not been able to make a general application of the suggestive approaches employed by Commons, Hale, Arnold, Herring, Gaus, and a few others in more limited studies. Or perhaps it is the reviewer who is out of step.

HUGH L. ELSBREE.

Dartmouth College.

Concept of Public Business. BY FORD P. HALL. (Bloomington, Indiana: Principia Press. 1940. Pp. 223. $4.00.)

Dealing with a hitherto neglected phase of business regulation, this volume presents a vital problem—What is "public" business? When is business affected with a public interest? Professor Hall treats of legal and administrative rather than economic factors. Accordingly he offers a comprehensive and critical discussion of statutes, court decisions, and administrative opinions, characterizing kinds of businesses affected with a public interest. The author also examines such questions as: On what do courts rely in determining whether a business is public or private? What constitutional limitations restrain regulation of public business?

The present distinction between public and private business is traced to an opinion of Justice Hale, rendered while he was Lord Chief Justice of England in 1671–76. Today it is found in the law of practically every nation.

Over the years, courts employed a variety of criteria, some of them inapplicable to modern legal problems. They include historical analogy, monopolistic privileges, indispensability of service or product, holding out of service to all, creating obligation to serve all, favorable treatment by the state in the form of charters, subsidies, and grants of eminent domain. Professor Hall points to the absurdity of including a small trucking business while "the gasoline business or the manufacture and distribution of food products" are private. He explains such "inconsistencies" as inherent in the attempt to set up a logical category (between public and private businesses) where no basis for such a distinction really existed.

Endorsed by the author are the famous dissent of former Justice Brandeis in New State Ice Co. v. Liebmann, 285 U.S. 262 (1932), and the majority opinions upholding the validity of the Bituminous Coal Act of 1937, Sunshine Coal Co. v. Adkins, 310 U.S. 381 (1940) and of price-fixing for the milk industry in New York, Nebbia v. New York 291 U.S. 502 (1934). They show a disposition to modernize the concept of public

business to "fit the needs of our present social and economic system" (p. 156).

In closing, Professor Hall suggests that courts approve "public business" regulations which correct economic "abuses" (p. 156) and invalidate those "detrimental to the welfare of the public" (p. 157). Thus bituminous coal and milk statutes corrected abuses of cutthroat competition. Statutes which merely reflect the efforts of "successful groups to gain for themselves an advantageous economic position" should be invalidated by the courts. Would not such a distinction be as vague and uncertain of application as the present one between "public" and "private" business?

The reviewer would go farther than the author in describing the concept of "public business" as a useful legal doctrine. Its value is twofold: (1) as an instrument for improvement of living standards, and (2) as a justification of government regulation in areas where private monopoly has narrowly restricted individual freedom of choice.

Professor Hall has performed a valuable service. He has shown how the concept of "public business" fails to meet present-day needs, and his plea that the courts adopt a more realistic treatment of the concept rather than the unsatisfactory "legal formulae" of the past is convincing. Excellent documentation contributes to the clarity and usefulness of the volume.

EDWARD W. CARTER.

University of Pennsylvania.

We Hold These Truths. EDITED BY STUART GERRY BROWN. (New York: Harper and Brothers. 1941. Pp. x, 351. $1.25.)

Democracy's Battle. BY FRANCIS WILLIAMS. (New York: The Viking Press. 1941. Pp. 324. $2.75.)

In *We Hold These Truths*, Stuart Gerry Brown brings together forty-four documents which, as he believes, include "the significant statements" of American democracy from its beginnings to the present day. Working, as he did, from an unambiguous majoritarian definition of democracy as a method for making decisions (thus not a "way of life," not a complex of imprescriptible rights, not an indefinable spirit of the laws), he might well have emerged with a unique contribution to our supply of political anthologies. Actually, however, his definition ("arriving at decisions by free discussion and majority consent") does not appear to have influenced his selections; and he passes by James Wilson, John Taylor of Caroline, the Woodrow Wilson of *Congressional Government*, and J. Allen Smith (to name four conspicuous examples of the sort of thing to which his definition would seem to commit him) for inaugurals, public papers, and court decisions—items of whose previous inaccessibility some of his readers will learn (from Brown's preface) with considerable surprise. On the other

hand, his brief introductory essay—largely an attack on the notion that the concept of democracy can be assigned an economic content—deserves the careful attention of every student of politics.

Democracy's Battle is an attempt to state the case for a British victory in the present war from the standpoint of democratic socialism. The author's procedure, with respect to those who denounce British democracy as a sham, is to plead the British guilty as charged and focus attention upon the chances of using the war as an occasion for reforming their ways. To this end, he would have the government take over complete control of the nation's economy, institute radical egalitarian reforms in its educational system, redistribute income in such fashion as to eliminate the present extremes of wealth and poverty, and take by taxation the funds it is now borrowing for prosecuting the war. Like John Strachey (but unlike Harold Laski), he goes so far in his condemnation of existing practices as to leave one wondering how, on his own principles, he can continue to support the war if the reforms that he demands are not instituted. He believes that, with American aid, Britain will win the war, and thinks (rashly?) that when the fighting is over the United States will be content to leave Europe in Britain's hands. That this would be a paradoxical result of a war fought to prevent domination of Europe by a single state, and that absolute power over Europe might corrupt Britain absolutely (thus rendering impossible the domestic changes he desires) are difficulties which Williams the democratic socialist gallantly refuses to press upon Williams the Englishman.

WILLMOORE KENDALL.

Hobart College.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Students of large-scale public administration have in recent years become increasingly aware of the important effect of administrative procedures on problems of organization and policy. Until the appearance of Comstock Glaser's *Administrative Procedure* (American Council on Public Affairs, pp. 207, $2.50 paper, $3.00 cloth), however, we had almost no literature on this important subject. Accordingly, Mr. Glaser's volume is sure of a warm welcome. It is extremely difficult to think through a new field with little or no aid from the literature. Dr. Glaser, an administrative analyst in the United States Department of Agriculture, has done a brilliant job in analyzing the flow of documents and its interrelations with administrative organization and policy. The necessity of procedural decentralization for the securing of genuine administrative decentralization is forcefully brought out; the various types of administrative analysis by

function, by sequence, and by organization are carefully outlined; discussions of program planning and management planning and administrative control delight the heart of the student who has been searching for just such discussions. It would be foolish to contend that the book is perfect. The reviewer questions very seriously the wisdom of Glaser's reverting to the use of the term "staff" to cover all of what Professor White has more aptly termed "auxiliary" agencies. He wonders whether Glaser's assumption that management analysis should generally be set up as "staff" function independent of "direct" administration is wise. He is sure that many more difficulties have been experienced with work unit control in the Forest Service than the account in this book indicates. Throughout the volume there is a little more tendency to "lay down the law" than is justified by our present experience. Most of these matters, however, are debatable. The fact that the reviewer has questions regarding them in his mind does not keep him from feeling a very genuine gratitude to the author for his substantial contribution to a new aspect of public administration literature.—GEORGE C. S. BENSON.

The student of the social process who would like to keep abreast of the best modern thought in the field of criminology in a specialized way will turn with interest and profit to "Crime in the United States" (*Annals of the American Academy of Political and Social Science*, Vol. 217, September, 1941, pp. ix, 237, $2.00), in which he will find presented much of the relevant and reliable information about crime causation which can be set forth at the present time within the limited compass of one volume. Edited by J. P. Shalloo, the volume has been built upon the assumption that any proper approach to the baffling problem of causation must not only reject the single-factor explanation, but set up an attack that will cover many fronts. To this end, some eighteen carefully selected specialists have contributed their efforts, in a survey that traverses the field from widely differing points of view. While such a division of labor inevitably results in some duplication, it also produces insights, analyses, and measurements which enrich the understanding of the non-specialized student of the crime problem in a way that would be difficult to duplicate. Included in these treatments are sections on (1) "Crime as Social Reality," Jerome Hall; (2) "Enforcement of the Criminal Law," Bruce Smith; (3) "The Source of Criminal Statistics," Ronald H. Beattie; (4) "The Geography of Crime," Joseph Cohen; (5) "Crime in City and Country Areas," George B. Vold; (6) "The Biologist Looks at Crime," M. F. Ashley Montagu; (7) "The Psychologist Looks at Crime," Lloyd N. Yepsen; (8) "The Psychiatrist Looks at Delinquency and Crime," William Healey; (9) "The Sociologist Looks at Crime," Walter C. Reckless; (10) "The European Immigrant and His Children," E. H. Stofflet; (11) "The Negro and Crime,"

Guy B. Johnson; (12) "Crime in a Competitive Society," Morris Ploscowe; (13) "Crime and Business," Edwin H. Sutherland; (14) "Organized Crime," Alfred R. Lindesmith; (15) "Crime in Wartime England," Hermann Mannheim; (16) "Criminals' Views on Crime Causation," Albert Morris; (17) "Official Agencies and Crime Prevention," Elio D. Monachesi; and (18) "Organized Efforts in Crime Prevention," Nathaniel Cantor. This valuable volume belongs on the *must* list of every political scientist.—F. R. AUMANN.

Raymond Atkinson's *The Federal Rôle in Unemployment Compensation Administration* (Committee on Social Security, Social Science Research Council, pp. x, 183, $2.00), is a most valuable book not only for teachers and practitioners of public administration, but also for students of American federal theory and practice. Although the author's primary concern is administrative practices and procedures, and the legislation upon which they are based, the broader implications of his study are never lost to view. The first three chapters, introductory in their nature, describe the basic features of the federal-state system of unemployment compensation, the perplexing administrative organization of the Social Security Board—a department within a department—and the influence of federal draft bills, administrative action, and legislative proposals upon state action. Mr. Atkinson concludes that the Social Security Board, more than any other federal agency, is exerting a powerful influence on a state government generally. The major portion of the book deals with the actual day-to-day job of administering our complicated unemployment compensation program. Problems incidental to the administration of the hundred per cent administrative grants, budget and grant procedure, federal standards of administration and their maintenance, and research and technical services are most fully discussed. An excellent chapter on "The Coördination of Social Insurance Agencies and Systems" concludes this part of the book. In the closing three chapters, Mr. Atkinson presents a full and fair account of the case for and against the continuance of our present federal-state unemployment compensation program. His preference for a nationalized system is based not only on the argument of administrative simplicity—at best a weak foundation for a social program as wide in its scope as unemployment compensation must be—but also on the more compelling social and economic factors. A brief appendix lists the main substantive features of the program as it now stands.—A. N. CHRISTENSEN.

The History of Public Welfare in New York State, 1867–1940 (University of Chicago Press, pp. xviii, 410, $3.50), by David M. Schneider and Albert Deutsch, brings to completion the work begun by Mr. Schneider in his earlier monograph, *The History of Public Welfare in New York State, 1609–*

1866. This volume traces the major developments in the public welfare field in New York during the last seventy-five years, describing in great detail the important legislative and organizational changes which have occurred there in response to changing economic and social conditions. The book is carefully written and well documented. The subject-matter is treated chronologically under the following heads: "Reconstruction and Industrial Expansion, 1867–94"; "Expanding Scope of State Supervision, 1895–1916"; "The Great War and Its Aftermath, 1917–21"; "State Consolidation and Control, 1922–29"; and "The Great Depression, 1930–40." The division seems excessive. At some places, especially in the last three sections of the study, it disrupts the continuity of the analysis and makes the treatment somewhat choppy and episodic. Unfortunately, recent developments are not analyzed critically. Changes are described, but not evaluated. The result is that little light is shed upon the experience which New York has had in dealing with the most important current problems of public welfare—problems of finance, overhead organization and management, state-local relations, functional integration, and the coördination of federal, state, and local responsibilities in the entire welfare field—PAUL T. STAFFORD.

John G. B. Hutchins' *The American Maritime Industries and Public Policy, 1789–1914* (Harvard University Press, pp. xxi, 627, $5.00) compares Old and New World shipping and shipbuilding activities from the American Revolution to the World War. The volume surveys the rise of American maritime power, in the form of wooden sailing ships, then traces the subsequent loss of leadership to European metal and composite sailing craft and steamers. Going behind the formal figures on construction and operating costs, Hutchins seeks fundamental explanations for this change, in terms of technology, economic organization, and governmental policies. On the basis of this material, how might American maritime strength have been preserved? Hutchins argues that Congress should have authorized registry under the Stars and Stripes of inexpensive steamers built in Europe, instead of confining American companies to the high-cost products of domestic yards. To finance the operation of ships engaged in foreign commerce, he thinks that there should have been a carefully planned and stable system of operating subsidies. Though recognizing the theoretical advantages in terms of efficiency of eliminating governmental intervention at sea, he appears to view official aid as being a practical national necessity in modern times. The text is closely documented, carefully organized, and in the main easy to follow. However, there are times when the layman tends to hurry over passages filled with unexplained terms, ranging from locust treenails to hackmatack knees, in quest of the linguistic safety of sections on the navigation laws.—WILLIAM BEARD.

In *Merit System Installation* (Public Administration Service, pp. vi, 58, $1.50), members of the staff of Public Administration Service present a brief manual of suggestions and advice for those responsible for the inauguration of a personnel program. The report is not, as the title might imply, a detailed analysis of technical procedures to be applied in the inauguration of a merit program. For example, the treatment of position classification is confined to four pages, although admittedly for such a crucial phase of merit system installation one would expect a more thorough presentation. The real value of the report is to be found in the hints and tips on pitfalls to be avoided and fundamentals to be observed in the inauguration of a merit program. Appropriate emphasis is given to the public relations aspect. Even experienced personnel administrators frequently fail to realize that every step in the installation process has, or may have, public relations significance. The major subjects covered are study and clarification of the basic law, establishing and sustaining good will, organization of the personnel department, the adoption of administrative rules, the position classification and pay plans, recruitment and examination, and operating procedures. Almost one-half of the manual is devoted to appendices supplying representative forms and materials for routine personnel operations.—MARTIN L. FAUST.

In his *The Citizen and the Law* (Farrar and Rinehart, pp. 363, $3.00), Morris Hadley presents a very elementary treatise on American government and law. The material falls into six major divisions entitled: "Law of Government"; "Law of Procedure"; "Law of Persons"; "Law of Property"; Law of Organization"; and "Law of Crime," with one to five chapters in each division. The so-called Law of Government section contains about the same type of matter that one finds in a grade or high school civics text. The other divisions of the law are likewise discussed in a style and language which a layman can readily understand. The book is designed for the "citizen," that is, the average person rather than for a specialist in the field. The "setting" of the book is in New York. The author purports to describe the New York situation and then to indicate in footnotes the points at which the New York picture is not typical. The degree to which this localization of the subject-matter is carried is indicated by the inclusion of the Manhattan addresses of certain offices described. One is inclined to doubt whether New York so nearly typifies the states of the Union, especially in the field of public law. In his entire discussion of what he terms the Law of Government, the author found it necessary to use only two notes in the part on state and local government. No doubt many teachers of the subject would find their task much simplified if this degree of uniformity were actually attained. As a treatise setting forth quite general principles of what we call public and private

law, the book can be recommended. Apparently almost any legal situation that a citizen is ever likely to be interested in is covered. The reviewer is inclined to believe, however, that the method of stating a specific state provision and assuming that it is the general rule, rather than stating a general rule and perhaps illustrating with a specific provision, may mislead the uninitiated.—P. S. SIKES.

The functional interplay of social and political forces between the nation and the states, "the large and the local," offers a fertile area for research. To it Winston Allen Flint has added a valuable case history. In *The Progressive Movement in Vermont* (American Council on Public Affairs, pp. 110, $2.00), he shows "how powerful were the forces of the national progressive movement in battering down the bulwarks of conservatism in an essentially agricultural state" (p. 7). After three chapters on the characteristics and leadership of the progressive movement nationally, the remaining seven are devoted to the following specific influences in Vermont politics: caucus reform and corrupt practices acts; supervision of public service corporations; advent of the Progressive party; direct primary legislation; labor regulation; workmen's compensation; and reorganization of state government. Although the political and legislative history of these measures is carefully reviewed, greater use might have been made of legislative committee hearings and roll calls. The ardor for these reforms sprang from the press, from the governors of the state, many of whom, significantly, received training out of the state, and from a few pressure groups. The Republican party was forced, grudgingly, to accept these measures in order to bring liberal insurgents back into the ranks. As a study in political dynamics, too little attention is given to the rôle of organized business and of agricultural interests. The part played by labor groups, however, is considered adequately. Besides being well documented, the work is improved by a sizeable bibliography classified according to primary and secondary sources.—HUGH A. BONE.

In his *William M. Evarts* (University of North Carolina Press, pp. viii, 587, $4.00), Chester L. Barrows, presents a full-length biography of one of the outstanding practicing lawyers of the Civil War and post-Civil War period. The author re-tells and embellishes with additional data the story of Evarts' career as Attorney-General, Secretary of State, and United States senator which was presented in 1933 in *The Public Career of William M. Evarts* by Brainerd Dyer. In addition, he presents many chapters based on records of Evarts' private law practice. Evarts was one of the adroit and not too scrupulous group of lawyers who sprang into prominence as tools of the perhaps even less scrupulous buccaneers of big business. Like others of his profession, he did not confine his activities to permanent

service of particular employers, but shifted from one to another as cases arose, accepting employment from litigants able to pay, and collecting enormous fees from them. In accepting retainers and in handling litigation, he seems to have been no more concerned than were his brethren about the morality of the issues involved. In spite of the apparent admiration of the author for his subject, therefore, the book may stir in the average reader only a limited enthusiasm for a man who, however able, was concerned primarily with building a private fortune by the adept use of the tricks of his profession, largely without reference to the public welfare. Because of the connection of prominent lawyers with railroad builders and manipulators and with men in other fields of business and industrial activity responsible for the development of modern enterprise, clinical studies of their activities are well worth making. Apart from the services which they rendered in public office, however, it may be seriously questioned whether they are entitled to the praise of the thoughtful historian.—CARL BRENT SWISHER.

If one believes that the historian should not merely present the facts, that he should not quarantine his opinions as if they were communicable diseases—in other words, that history should not be without criteria or significance—one will thoroughly enjoy Jeannette P. Nichols and J. G. Randall (eds.), *Democracy in the Middle West, 1840–1940* (Appleton-Century Co., pp. xvi, 117, $1.25). The little volume is made up of essays by J. G. Randall, W. O. Lynch, H. C. Hubbart, J. P. Nichols, and J. D. Hicks, presented, in part, to the Mississippi Valley Historical Association in 1939. The essays are such a fine combination of scholarship, keen analysis, and good writing that one's only disappointment will be that they are so short. Randall's kaleidoscopic and provocative picture of the character of the Middle West; Lynch's comments on the peopling of the Valley, with his shrewd evaluation of the failures and accomplishments of its settlers; Miss Nichols' examination of the years from Lincoln to Theodore Roosevelt, with her emphasis on economic problems and her conclusion that the function of the Middle West has been one of compromise and adjustment; Hubbart's appreciative and critical portrayal of the years 1840–65; and Hicks' treatment of a Middle West come of age, a Middle West that is neither radical nor crackpot but that has learned its lesson from the East and is equally ready to make use of government to protect its own property interest—all serve to provide a book that one does not put out of mind when one puts it out of sight.—E. M. KIRKPATRICK.

Walter Gellhorn's *Federal Administration Proceedings* (Johns Hopkins Press, pp. 144, $2.00) comprises four lectures by the research director of the Attorney-General's Committee on Administrative Procedure and is a genuine contribution to our thought on administrative law. The lectures

include much useful summary of the Committee's monographs on procedures in various federal agencies, and acute criticism of the stereotyped reactions (such as the "prosecutor-judge" complaint) against administrative regulation. A surprising acquaintance (for a lawyer's book) with political science literature and the political science approach is revealed in a final lecture on "The Infusion of Lay Elements into the Administrative Process." In view of the confusing nature of the report of the Attorney-General's Committee, this little volume is a refreshing means of giving us some of the findings and analysis of the able staff which worked for that committee. The chief objection to it is its brevity. We may hope for more from the same source on such problems as administrative collateral enforcement, the expedition of administrative judgments, and the publicizing of information on administrative policies. Mr. Gellhorn has so effectively combatted numerous American Bar Association charges (especially of the McGuire era) against the administrative process that he has not had time to consider adequately the question of how we lesser mortals fare at the hands of the Great White Father's regulatory agencies.—GEORGE C. S. BENSON.

The story of the experiment in compulsory arbitration in Kansas told by Domenico Gagliardo in *The Kansas Industrial Court* (University of Kansas Publications, Social Science Studies, pp. viii, 264) adds to the considerable literature on Kansas' industrial disputes which appeared during the period of the Court. This study, appearing now, may be prompted by current interest in industrial disputes, for it can hardly be said that the general features of the picture of the experiment, previously presented, have been altered. The contribution is one of detail and background, particularly of the part played by individuals and political forces. Its chief features are political and economic. One may experience little difficulty in seeing the pattern of procedure in the Court's investigative functions, but patterns in other procedures are less clear. To the frankly critical analysis given the Court's work, one should like to have added some criticism of the function assigned the Court of seeing that the industries of Kansas maintained uninterrupted production to meet local needs. Numerous helpful data and useful charts are embodied in the text, though one misses the convenience of "The Kansas Industrial Court Act" in an appendix. A good classified bibliography is presented.—H. C. COOK.

Monetary Management Under the New Deal (American Council on Public Affairs, pp. 380, $3.75 cloth, $3.25 paper), by Arthur Whipple Crawford, is an admirable presentation of the history of the evolution of our present managed-currency system, together with a clear statement of the problems and results of monetary management. The author has no axe to grind, and his material is offered in a thoroughly readable style.

The footnotes are copious and the bibliography is extraordinarily complete. After an introductory chapter is presented the story of monetary trends during the Hoover administration and of the money issue in the 1932 campaign. Then follows a statement of the long series of events beginning with the banking crisis of early 1933 and ending with discussions in Congress as late as 1940 over the place of silver in our monetary mechanism. To this reviewer, the most interesting aspect of the book is the impartiality with which Mr. Crawford has presented the conflicting views of those who participated in the determination of monetary policy in the first seven years of President Roosevelt's period of office, and the clear way in which he has discussed the constitutional issues raised in the various court tests of the validity of the new laws and orders.—JOHN G. HERNDON.

On the whole, social scientists are compelled to draw their generalizations from the observation of uncontrolled phenomena rather than on the basis of experimentation as it is known in the physical sciences. Therefore a report of a controlled experiment, such as made by Herbert A. Simon, W. R. Divine, E. M. Cooper, and Milton Chernin in *Determining Work Load for Professional Staff in a Public Welfare Agency* (Bureau of Public Administration, University of California, pp. 94, $1.00), should attract wide interest. The object of the study was to determine relationships between case load and accuracy in applying the law—all significant factors being measured quantitatively. Welfare administrators, legislators, and taxpayers should be interested in the findings. Many social scientists may be more interested in the methods by which unusual success was achieved in controlling extraneous factors. Thanks to the willing coöperation of the state relief administration, the authors have made a significant contribution to experimental technique in the study of administration.—EDWIN O. STENE.

In *The American Constitution* (Radcliffe Press, pp. 519, $3.25), William L. Ludlow has tried to "provide an elementary study of the American Constitution through the interpretations of the Supreme Court . . ." (p. vii). It does not seem, from the results, that such a study can be made elementary enough for an undergraduate text and still give adequately the substance of the court decisions. The organization of the book is good; the style could be better. An appendix furnishes biographical data concerning the men who have sat on the supreme bench, though it errs in saying of Justice Brandeis: "He served until his death in 1939" (p. 493). Since all but a few notations are limited to bare citations of cases, they might have been footnoted rather than grouped at the end of the volume. Final judgment, however, of a text of this sort should rest upon a practical test in classes, not upon detached examination.—HILTON P. GOSS.

Economic Problems of National Defense; A Symposium (Indiana University, pp. 214, $1.00) is a collection of twelve short discussions by George A. Steiner, editor, and ten of his colleagues in the Indiana University School of Business and the department of economics concerning business and industrial problems growing out of mobilization for war in the United States. Written primarily for the business man and to aid him in making adjustment to the emergency situation, the essays have a wider usefulness. The topics selected range pretty well over the field and include the problems of housing, the cost of living, labor, marketing, transportation, insurance, and monetary policies. College students and teachers will be particularly appreciative of the concise summary of the governmental mobilization machinery and controls of today and of 1918, with organization charts. The bibliography is well selected.—EARL L. SHOUP.

Julia E. Johnsen's *Compulsory Military Training* (The H. W. Wilson Company, pp. 266, $1.25) is an excellent handbook for debaters and a splendid source of information for all who desire to know the arguments for and against compulsory military training. It is a compilation of carefully selected materials drawn from many current sources and prepared by leaders in the life of the nation. After a general introduction in which the historical and legal aspects of the problem are analyzed, the book sets forth the affirmative and negative arguments in turn. This is followed by a detailed outline of the materials presented. The last twenty-two pages are devoted to a carefully organized bibliography of the subject.—DANIEL B. CARROLL.

Zoning technicians, developers of subdivisions, and those who have the responsibility for drafting subdivision regulations will welcome Harold W. Lautner's *Subdivision Regulations: An Analysis of Land Subdivision Control Practices* (Public Administration Service, pp. xvii, 346, $3.75). The book is a compilation of existing platting regulations covering all subjects from the procedure of securing plat approval to what Lakewood township, New Jersey, requires in the erection of street signs in its subdivision developments. The excellent table of contents may be used as an index to find any subject quickly. Under each subject, such as Street Grades, or Roadway Widths, the reader will find a general statement and, immediately following, an appendix listing all regulations by state and local governments. Mr. Lautner has made a valuable contribution to his subject. —KENNETH P. VINSEL.

FOREIGN GOVERNMENT AND POLITICS

Contemporary Europe; A Study of National, International, Economic, and Cultural Trends (D. Van Nostrand Co., pp. xiv, 670, $5.00) is a sym-

posium to which thirty authors have contributed, with Joseph S. Roucek as editor. Of the numerous contributors, at least half are historians, while the others are, in the main, sociologists, economists, and political scientists. For a project of such proportions, the exposition proceeds logically, and the book is reasonably well integrated. The period covered is that between the two world wars, and the attempt is made, in the words of the editor, "to synthesize the genetic development of Europe in its political, economic, and cultural aspects from 1918 to the present time." Of the thirty-three chapters, each written by a person of specialized interest, nineteen concern individual European states or groups of states, including the U.S.S.R. and the Near East. Each of these nineteen chapters follows a fairly consistent pattern, as follows: geographical setting; ethnography (including minorities problems); situation at the end of World War I; political affairs and political development, 1919–40; economic and cultural development (including, first, industry, trade, agriculture, and natural resources; and, second, social problems, literature, art, and science); imperial and colonial problems; and, finally, the impact of World War II. The base of the book is broadened by the inclusion of chapters on such subjects as the papacy, the new ideologies, military strategy (setting forth the importance to strategy of a study of military geography), science and technology (different but realistic), the arts and music, philosophy, religion, literature, and the social sciences and education. Helpful bibliographies are included, not only at the end of chapters, but occasionally at the end of sections as well. Occasional minor errors have been noted. There is some repetition, probably quite unavoidable in an undertaking of this nature. And some question may be raised concerning the weight and space given to various countries, as, for example, slightly more than one page devoted to Portugal proper, as compared to nearly fourteen pages for Hungary. The references and notes are collected at the end of the chapters—always a bothersome feature. The cartography by R. E. Falconer, although somewhat unconventional, is characterized by relative simplicity and is designed to emphasize such economic and population factors as density, raw materials, explosive minorities, etc. . . . On the whole, the volume is well done. No attempt has been made, probably wisely, to present maps relating to the present war. The book should be of service particularly to students and teachers of international relations and of modern European history.—IVAN M. STONE.

Paul M. A. Linebarger's *The China of Chiang K'ai-shek* (World Peace Foundation, pp. vii, 449, $2.50) is a book which no student of Far Eastern affairs can, and no student of government should, do without. It is more than a supplement to the author's earlier work, *Government in Republican China* (1938); it is a painstaking and dispassionate analysis of the de-

velopment of political thinking and political practice of a people in the midst of a life and death struggle for survival. In this book, Linebarger shows that rare quality of being able to dig down into available source materials; to collect the facts and present them in orderly fashion; and then to stand back and view the picture without loss of perspective. The thoroughness of his use of materials is impressive: in his footnotes he gives the honest man's gesture to other men's hard work, even when that work is more superficial than his own; his documents, admittedly translations made by others (though one has the feeling that the author knows more of the Chinese language than his modesty permits him to claim) are carefully cross-checked; his appendices—perhaps a bit too long and broad in scope—include extraordinarily valuable material, especially the notes on personal interviews with Generalissimo Chiang K'ai-shek and others. A particularly valuable addition is his glossary of Chinese terms in both English and Chinese, for which every Chinese as well as foreign scholar should be grateful. The body of the work represents, of course, a task of assemblage of facts which someone, somewhere, sometime had to get together and make available to English-reading students of government and of Far Eastern affairs. But these chapters on the constitution; political, consultative and administrative organs; provincial, local, and special area governments; the Kuomintang, Communist, and minor parties; and on the governing institutions of the Japanese and pro-Japanese are not merely an assemblage of facts. The facts are—one is tempted to say—diagnosed as presented. The two concluding chapters on extra-political forces and on Sun Yat-sen and Chiang K'ai-shek not only afford an excellent survey of such noteworthy and probably significant forces as the Chinese Industrial Coöperatives and the Mass Education movement, but also give us the necessary orientation of these phenomena with the early days of the Nationalist movement. Throughout, the author never permits himself to get lost in the forest; the analyst, the student of government in its broader aspects, is always present.—Ernest B. Price.

Out of war-time Cambridge (England) comes an astonishing piece of Nazi propaganda—C. W. Guillebaud's *The Social Policy of Nazi Germany* (Macmillan Co., pp. viii, 134, $1.25). The book claims to be an objective account of the various aspects of Nazi social policy, but in reality it gives a distorted picture, continually stressing alleged achievements while excusing darker aspects, so that protestations of the author's own liberal views cannot but remind one of Antony's "I come to bury Caesar, not to praise him." Guillebaud chiefly relies on official statistics and the rather obscure *Memoranda* of the Imperial Policy Group, the editor of which, de Courcy, stated in 1939 that Nazi labor policy had gained the "general con-

tentment" of the working classes. Guillebaud accordingly affirms that this policy had brought about the "atmosphere of hope and creative activity which characterized Germany between 1933 and 1938," which happy development was "interrupted" when the "external reactions to Hitler's foreign policy" led to a "national emergency" forcing the régime to cancel part of its social policy. It has escaped the author's attention that this "national emergency" was the unavoidable and, indeed, foreseen result of general Nazi policy from the outset (incidentally, Germany left the Disarmament Conference and the League in 1933 and not in 1935, p. 46). There is an 'objectivity' which is really propaganda in disguise. Totalitarianism, in its propaganda abroad, specialized in it and made many a foreigner—frequently himself unconscious victim of this propaganda—its tool. We must indeed avoid wishful thinking and take successes of totalitarian régimes seriously. But by all means let us first ascertain the facts of the situation. Has the German worker, even before 1938, really gained economically? Only if this had been ascertained could we approach the problem of masses preferring "security" to "freedom." At this early moment, it seems very difficult to obtain the data necessary for an unbiased answer. This book proves that even occasional visits to Germany by foreign experts may not yield sufficient knowledge for impartial judgments. Implicitly, however, it shows why France fell and other democracies might follow.—JOHN H. HERZ.

The evolution of industrial society up to the threshold of our day has provided economic theory with little opportunity for assessing the material significance of ideology and violence. This fact may explain the dearth of competent studies of the economics of totalitarianism. Maxine Y. Sweezy's *The Structure of the Nazi Economy* (Harvard University Press, pp. xvi, 255, $3.00) represents a most welcome addition to the small body of serious writings on the topic that have appeared thus far. Meticulous research and sober reasoning give the book distinction. Much revealing information has been culled from official German statistics, which the author found "fairly reliable if used carefully and critically." While no major aspect of the subject-matter has been omitted, the treatment is selective, and in certain parts somewhat sketchy. The chapters devoted to the growth of governmental control over business, the status and earnings of the large corporations, the effects of financial policies, and the development of national income, consumption, and social welfare stand out as the best. Transportation and cartelization, on the other hand, are dealt with in less than ten pages each. Given the principal objective of Hitler's strategy—"preparing for preparedness," as I called it in my *Government in the Third Reich*—the economic policies pursued make grim

sense. In Dr. Sweezy's appraisal, "The short-run achievement of the Nazis is evident." But though financial difficulties "do not seriously threaten the system," its operation has made the consumer "the orphan child of Nazism." What factors induced him to put up with it, how he was able to retain his morale in spite of the sacrifices demanded of him, why after two years of war he is still going on—these questions remain open. Perhaps it is a hint to the political scientist that even so inquisitive an economist as Dr. Sweezy declines to venture an answer.—FRITZ MORSTEIN MARX.

Robert Ergang's *The Potsdam Führer* (Columbia University Press, pp. 290, $3.00) is at once a biographical study of Frederick William I and an analysis of his official policies, particularly his policy with regard to the army. The author claims significance for his work with the statement that Frederick William I has been neglected by English and American writers, although he is the "real father of the army of modern Prussia" and is responsible for casting "the whole Prussian nation into a military mold, fixing on his subjects military habits which have continued to characterize Prusso-Germans to this day." Following introductory chapters, Mr. Ergang describes Frederick William's policies with regard to the army, the civil service, education, religion, the administration of justice, economic and political relations with foreign states, and the training of the Crown Prince. In almost every connection, the emphasis which Frederick William placed on the military is revealed. He derided those who " 'say that they will obtain land and people for the king with the pen' " and asserted his belief that " 'it can be done only with the sword'." On the basis of this belief, he made the development of a strong army and a full war chest his primary objectives, reorganizing the administrative services of the government so as to knit the country more closely together and provide greater revenues, and strictly regulating economic activities and foreign trade in the interest of the power of the state. He enforced the greatest parsimony in connection with various non-military activities of the government, and in the royal court itself, so as to leave more money for the army. Though in population Prussia was only the twelfth largest state in Europe, he made his army fourth in size and first in effectiveness. Meantime he had instructed the tutors of his son, known to history as Frederick the Great, to impress on him " 'the conviction that nothing on earth can earn him more glory and honor than the sword and that he will be a contemptible creature if he does not love the sword and does not seek glory in it and through it'." The book is timely and substantial. Particular attention might be called to the introduction, which contains numerous quotations from German statesmen and writers, historical and contemporary, revealing the penchant of the Prussians for things military.—VERNON VAN DYKE.

British Unemployment Programs, 1920–1938 (Committee on Social Security, Social Science Research Council, pp. 385, $2.75), by Eveline M. Burns, is essentially an interpretation and appraisal of the various policies and programs adopted in Great Britain for coping with the vast unemployment problem of the last two decades. The author is peculiarly well-fitted for this task. A former official of the British Ministry of Labor, Mrs. Burns has long been an outstanding authority on social security in this country. She approaches her subject with an understanding no one but a native Britisher could have, but from the perspective of an able scholar, whose chief interest, beyond discovering and telling the truth, lies in the improvement of social security in the United States. The study is of greatest value in connection with the development of governmental policies in relation to unemployment, both in Britain and in the United States. The book, and particularly the concluding chapter, however, is very suggestive also for an understanding of the social security movement and of the forces which are producing a social service state and the major implications of this development. While not the last word on every phase of the British unemployment programs, the book is easily the best on the subject. It is directed, however, to the specialist rather than to the general reader.—Edwin E. Witte.

In his *Ideas and Ideals of the British Empire* (Cambridge University Press, pp. 167, 3s. 6d.), Ernest Barker presents a concise and penetrating analysis of the most important contributions of the British Empire to the art of government. Although the Empire, he admits, originally resulted from two driving motives, the desire to escape governmental restrictions through overseas settlements and the desire for profitable business investments, it has been transformed during the last hundred years into "a subtle and intricate structure for the development of human freedom." Among the factors which have wrought this transformation, the author gives high place to the ideas embodied in the English common law and equity. The former places emphasis upon the liberty of the subject, while the latter, with its idea of trusteeship, emphasizes the idea that the right to govern is held in trust for the benefit of the people. These concepts carried throughout the Empire were the ideals under which, according to the author, all parts of the Empire have marched toward greater freedom. The Dominions have already reached the goal of complete self-government. India is drawing "closer and closer to responsible self-government and full Dominion status." Even the colonial, or dependent, empire, through the device of "indirect rule," is already gaining experience in democratic government. Dr. Barker has written a valuable essay. He shows keen insight into contemporary imperial problems. He glosses over no British mistakes, and he presents his claims in behalf of the Empire with becoming modesty.—Elmer D. Graper.

Statistical Activities of the American Nations, 1940 (Inter-American Statistical Institute, pp. xxi, 842) is a compendium of information compiled for the first time concerning statistical work and organizations in twenty-two North and South American countries. It is edited by Elizabeth Phelps under the direction of the Temporary Organizing Committee of the Inter-American Statistical Institute. The data on each country include a summary of statistical activities, the national population censuses, the system of official statistics, a list of statistical publications, and an article written in the official language of the country on the statistical activities. The section on the United States covers 143 pages and summarizes in convenient form the many statistical activities undertaken in this country. The appendices include a biographical directory of statistical personnel in the American nations other than the United States and notes on the statistical sources of Latin America. With the present emphasis on close economic and social relationships between the countries of the Western Hemisphere, collaboration in providing accurate comparable statistical data is imperative. The Inter-American Statistical Institute is to be complimented on the solid foundation laid, in this compendium, for coöperation between the experts of the respective countries. Improved methodology in furthering the practical use of statistics in the solution of social and economic problems common to these nations is an important step in cementing friendly relations.—JOHN P. SENNING.

Labour's Aims in War and Peace (Rand School Press, pp. 156, $1.75) is a collection of statements issued individually or collectively by Clement Attlee and other British labor leaders during the first nine months of the present war—statements of historic importance as part of the effort of a great movement to define its position. On the one hand, labor supported the war, while criticizing Neville Chamberlain's methods and attacking his aims; on the other hand, it issued a socialist programme, while denouncing Soviet aggressions. In the present, it repudiated armed attacks on the sovereignty of small states; for the future, it looked forward to their voluntary abdication of that sovereignty in favor of an international authority strong enough to enforce the peace. The most symptomatic omission, in view of later developments, is the complete absence of French collaborators. The most important contributions, on the side of political theory, are those of Leonard Woolf on international government and Harold Laski on the relation between war and capitalism. —W. H. WICKWAR.

The literature on the British government in war-time is enriched by the publication of *The Labour Situation in Great Britain* (International Labor Office, pp. 56, $0.25). This report was prepared by Messrs. A. D. K.

Owen and Neil Little. While the labor policy of the British government in the period May–October, 1940, is the main theme, the booklet covers broadly many other aspects of economic affairs and describes the governmental agencies that have been set up to administer the program. The policies designed to insure an adequate supply and distribution of skilled workers in spite of military service, the problems of wages, hours, and working conditions, the diversified employments being entered by women —these and many other phases of war economy are described. The authors reach the conclusion that, for the great majority of the population, the war has meant an appreciable, but not serious, reduction in the standard of living.—JOSEPH R. STARR.

In addition to being a great repository of books, the Library of Congress often publishes useful volumes. A noteworthy recent addition to this latter service is Annita Melville Ker's *Mexican Government Publications* (Government Printing Office, pp. xxi, 333, $1.25), carrying the descriptive subtitle, "A Guide to the More Important Publications of the National Government of Mexico, 1821–1936." The material is partially in Spanish and partially in English. More than thirty great collections in the United States and Mexico were combed for titles. The general arrangement is according to legislative, executive, and judicial branches, with many separate offices and items listed under the first two. The volume is a valuable bibliographical tool.—RUSSELL H. FITZGIBBON.

The program of American aid to Great Britain will hardly be undermined by Giselher Wirsing's *The 100 Families That Rule the Empire* (Flanders Hall, pp. 116, $1.00), although that was undoubtedly intended to be its effect. It is well known that both the author and the publisher of this book are registered with the State Department as agents of the German government. The book is a vitriolic attack upon the British, designed to show that a small clique of British capitalists are responsible for the present war. It presents nothing new in the way of analysis of British government and society, and the facts to elaborate its argument are lifted, with acknowledgement, from Simon Haxey's *England's Money Lords* and from the publications of the extremely left-wing Labor Research Department. The chief interest of this propagandist tirade is the pseudo-proletarian philosophy pervading it.—JOSEPH R. STARR.

INTERNATIONAL LAW AND RELATIONS

Seven members of the University of California faculties, in search of certain aspects of truth and American widespread comprehension thereof have collaborated in the production of *The Renaissance of Asia* (University of California Press, pp. xi, 169, cloth, $1.50, paper, $1.00). Six of the

collaborators contributed to a series of lectures delivered in Los Angeles during the spring of 1939; the seventh, Professor Malbone W. Graham, composed the discriminatingly analytical preface to the volume. The topics discussed, and those discussing them, were: "India under the New Constitution," Frank J. Klingberg; "The Rôle of Indo-China in Asia," Melvin M. Knight; "Domestic Factors in Japanese Foreign Policy," Kazuo Kawai; "Japan's Aims and Aspirations on the Continent of Asia," N. Wing Mah; "Soviet Russia in Asia," Robert J. Kerner; and "The Future of China," H. Arthur Steiner. All of the topics were competently and interestingly (one of them brilliantly) presented; which is saying a great deal, considering the factors of space and time involved, in conjunction with the racial, social, religious, and political complexities of each of the areas considered. Many might prefer estimating the number of angels which a needle point can hold, or attempting a definition of Truth while standing on one foot, to discussing, in an average of twenty-eight small pages, the significant domestic and international aspects of contemporary India or Indo-China or China or Japan or Siberia. Not a single error of fact has been noted—and only one typographical error. After reading Professor Knight's primarily economic account of Indo-China, which account was prepared two years before the most recent unpleasantnesses in that area, one is even less surprised than before at the ease with which the Japanese grabbed France's plum for their "co-prosperity" basket. Of the innumerable explanations of Nippon's wheels, and why they go round often counter-clockwise, the best brief one read by the undersigned is that by Mr. Kawai. To be entirely trite, it alone is worth the price of the volume in either of its bindings! Those who may be hazy concerning Asiatic Russia's advances in power northward and eastward under Soviet leadership will do well to read Professor Kerner's masterly survey, while others who "philosophically" fail to see a difference between the Japanese as would-be conquerors of China and earlier (and more successful) comers to China in that capacity will profit from cogitating Mr. Steiner's informedly optimistic analysis. Not only is the University of California to be congratulated upon the publication of so valuable a work by members of its faculties; it is to be congratulated upon having a press which puts forth volumes as distinguished in format as is *The Renaissance of Asia*.—HARLEY FARNSWORTH MACNAIR.

Florence Horn's *Orphans of the Pacific* (Reynal and Hitchcock, pp. v, 316, with 32 photographs, $3.50) is the by-product of the June, 1940, *Fortune* article on the Philippines. It is well described by the publisher's "blurb" as "a grand piece of reporting, based on direct observation and a keen sense of values, and blending information and entertainment in a manner that is a reader's delight." In type, the volume can be bracketed

with the productions of other American journalists who have "covered" the Philippines: Charles Edward Russell, Nicholas Roosevelt, and Katherine Mayo, for example. Miss Horn has discussed a number of the perennial Philippine subjects as well as some of the newer problems which are currently worrying both Americans and Filipinos, such as the economic effects of the Tydings-McDuffie Act and the "windfall" coconut excise tax revenue, Japanese economic and political penetration, defense, and the difficulties which the United States may have in ridding itself of the Philippines in 1946 should it still wish to do so at that time. In the Philippines, Miss Horn collected a surprising amount of information. While much of it is scarcely above the level of gossip, her facts concerning the basic Philippine industries are important, apparently accurate, and in some instances not easily obtainable elsewhere. Her analysis of the economic aspects of the American-Philippine relationship is worthy of serious consideration. So is the reasoning upon which she bases her conclusion that the Philippines are not yet prepared to stand alone as a really independent nation. It is unfortunate that a book as worth while in many respects as is this one should contain statements which probably will injure feelings and arouse indignation in the Philippines. Arrogance of spirit and brutality of expression may provide the "entertainment" to make a reporter's story sell in the United States. More than any other one thing, however, they harden the Filipinos' determination to separate themselves from America, and render difficult the existing Philippine-American relationship. These qualities in Miss Horn's book and the dozen otherwise unimportant errors which the volume contains reveal its superficiality. *Orphans of the Pacific* is indeed "a grand piece of reporting" in the American style; but it is not a true picture of the Philippines.— J. R. HAYDEN.

Mark J. Gayn, author of *The Fight for the Pacific* (Morrow, pp. xii, 378, $3.00), was born at Barim, "a tiny Mongol-Chinese town nestling at the foot of the Khingan range." In 1928—after having lived at Vladivostok, Shanghai, Canton, and other Far Eastern centers of activity—he entered upon a newspaper career which included service from 1934 to the summer of 1937 as English editor of the Japanese news agency "Rengo." This valuable background makes his study of recent Far Eastern developments something more than the usual "newspaper man's book." Well organized and free from unnecessary repetition, the story moves at a lively pace; yet the generalizations seldom go beyond the evidence, and the few errors that have been noted relate to comparatively unimportant details. Japan, short in natural resources but long on resourcefulness, is shown to be a persistent threat to peace, not only in the Pacific but in the world. The frankly opportunist policy of Tokyo rests upon a fixed determination

to dominate East Asia, and on this point there is virtual unanimity among army officers, bureaucrats, politicians, and business leaders. Mr. Gayn's realistic grasp of this fact gives clarity to his treatment: "Throughout this book the term 'moderates,' when applied to groups in Japan, . . . is never intended to indicate that such groups or individuals are opposed to aggression. There are few Japanese who do not wish to see Nippon's flag planted in China, Indo-China, or the Dutch East Indies. But the 'moderates'—in contrast to the 'extremists' and 'jingoists'—wish to take no aggressive move if it entails excessive costs or military risks" (p. 17, note). —G. Nye Steiger.

Students of Far Eastern affairs are indebted to the International Secretariat of the Institute of Pacific Relations for yet another competent addition to its Inquiry Series: Robert W. Barnett's *Economic Shanghai: Hostage of Politics* (Institute of Pacific Relations, pp. xiii, 210, $2.00). This study gets together within the covers of one book fugitive material too valuable to be lost. While the book is primarily and admittedly a research project, and hence includes of necessity a mass of statistical and other factual data which make at times rather heavy reading, its analysis of the effect of war and politics on that powerful economic center, Shanghai, is admirable. The first chapter on the siege of Shanghai is an unusually lucid, even though sparingly documented, record of a significant epoch marking a profound change in orientation of West and East. The chapters on labor and industry are as much an indictment of greed, avarice, and a callous disregard for human suffering on the part of those who sought to make profit by the misfortune of others in that unhappy city as it is of the stark militarism of Japanese continental policy. The sections on currency and finance and on commerce and shipping at Shanghai make less exciting reading, but contain material no less significant. The brief concluding chapter, bearing the title of the book, is a competent summation. The reader is left with a feeling that the old Shanghai is gone forever and that the future of the new Shanghai waits on developments over which its citizens have no control.—Ernest B. Price.

Those responsible for undergraduate courses in Latin-American political affairs and history will find the problem of respectable textual assignments in English much less difficult since the appearance of A. Curtis Wilgus' *The Development of Hispanic America* (Farrar and Rinehart, pp. xviii, 941, $4.75). The author generally follows an orthodox plan of presentation. There are divisions dealing with "Backgrounds" and "Discovery," "Colonial Development," "Revolutions for Independence," chapters on the development of each country during the national period (in which are considered political history, economic development, and

development of the arts), and finally a division devoted to "International Relations in the Modern Period." The appendices consist of an excellent glossary of Latin-American terms, abstracts of the constitutions past as well as present, and a "Bibliographical Essay" of some fifty pages dealing with publications in English and in foreign languages. In addition, there are reference lists of books in English at the end of each chapter. In the opinion of the reviewer, Professor Wilgus' text has more to justify its claim to leadership in its class than the reference paraphernalia mentioned. The section on colonial development is a boon to teachers struggling with the task of presenting the problems of colonial administration with accurate simplicity. The same may be said of the chapters dealing with the revolutionary period. The summaries of the political developments of the states during the national period, found in the chapters on the various countries, are characterized by the same accurate simplicity. The clear and concise way in which these matters are handled leads to the conclusion that the book is the most serviceable for those teaching Latin-American affairs.—WILLIAM M. GIBSON.

How to forestall Nazi use of economic weapons for political purposes is Percy W. Bidwell's problem in his pamphlet, *Economic Defense of Latin America* (World Peace Foundation, pp. 96, cloth $0.50, paper $0.25). Although urging a variety of measures to mitigate the hardships of war for the vulnerable semi-colonial economies of Latin America, Mr. Bidwell concludes that British victory is essential to the protection of the United States from Nazi infiltration below the Rio Grande. Hemispheric self-sufficiency is dismissed by observing that (1) a German triumph might make it unacceptable to our Latin-American neighbors; (2) a British victory would make it unnecessary; and (3) it is impracticable in any case. The discussion is admittedly and purposely elementary, being designed for the non-specialist in Latin-American affairs—a category which includes too many political scientists. An irrelevant chapter on German propaganda does not detract from the usefulness of the publication.—WILLIAM T. R. FOX.

The Diplomatic Recognition of the Border States, Part III: Latvia (University of California Press, pp. vii, 399–564) is the third in a series of studies by Professor Malbone W. Graham dealing with the borderlands of the Russian Empire. Like the first two, this is an account of a struggle for diplomatic recognition following a successful movement for independence from Russia. Professor Graham concentrates on the developments of the four years immediately following the Russian Revolution. As the Russian Empire crumbled and the Letts were making every effort to establish the foundations of a stable government, there was little sym-

pathy among the Great Powers with the idea of Lettish independence. The leaders of Latvia were active at the Paris Peace Conference and pressed their claims before the Baltic Commission created by that conference. No important change in the attitude of nations was apparent, however, until after the Treaty of Riga made by Latvia with Russia in 1920. Latvia was admitted to the League of Nations in 1921, and recognition was subsequently extended by a number of states not members of the League, including the United States. The book is well written, and documentation throughout is excellent; many of the documents cited in the footnotes are given in textual form in the latter part of the book. There are also two appendices, one on "The United States and Latvia, 1918–1919," and the other entitled "Latvia and France, 1918–1921."—NORMAN L. HILL.

Albert B. Corey has based his study, *The Crisis of 1830–1842 in Canadian-American Relations* (Yale University Press, pp. 203, $2.50) on an extensive use of contemporary American newspapers and periodicals and of British, American, and Canadian state papers. The main theme of this latest addition to the Carnegie Endowment series on "The Relations of Canada and the United States" is the effect of the Canadian rebellion of 1837 on British-American and Canadian-American relations, although the penultimate chapter on the Webster-Ashburton Treaty extends the range of interest to all the problems settled by that treaty. The author assumes that the widespread American sympathy for the Canadian rebel cause was unjustified, and that therefore the official policy of non-intervention was fully warranted. Unfortunately, no attempt is made to analyze Canadian conditions and opinion, and accordingly the case for non-intervention is not conclusively proved.—H. G. SKILLING.

POLITICAL THEORY AND MISCELLANEOUS

The purpose of Henry M. Magid's *English Political Pluralism; The Problem of Freedom and Organization* (Columbia University Press, pp. 100, $1.25) is to show the contribution of pluralist theory in general, and of the English pluralists Figgis, Cole, and Laski in particular, to the analysis of freedom and the democratic state. Having evaluated the theories of the three Englishmen, whose respective approaches represent three trends in British pluralism, Mr. Magid presents his own view of "the significance of pluralism for political theory." Referring critically to Cole, he points out that pluralism "is concerned with more than mere organization and . . . does not indicate any definite plan of action." Its contribution, he says, consists primarily in an extirpation of "organic state theories" and in formulating "the fundamental content of freedom and democracy" in the light of a pluralistic conception of authority. The gist of the author's conclusion is that democracy is pluralistic because it does not insist on

Gleichschaltung of groups as well as individuals. The division of attention between individuals and groups in his definition of political freedom and in his discussion of popular control of government is a significant and well warranted shift of emphasis springing from an appreciation, not only of the political importance of interest groups, but also of the fact that man is not wholly accounted for as an individual. And in showing what distinguishes the government of the state from the government of groups within the state, the author sizes up quite accurately the state's position among other groups as to the functions which it performs. He fails, however, to appreciate fully the preëminent place which the state occupies in man's allegiance. Mr. Magid is too preoccupied with the diversity of human interests. Moreover, he seems to assume tacitly that man's allegiance depends on a better calculation of his interests than he is really capable of. The weight of political tradition, the persistence of political thought- and behavior-patterns cannot be brushed aside by a denial of the validity of such abstractions as the general will and the common good. There still remains the very practical common good of political stability, the advantages of which man is certainly just as capable of perceiving in ordinary circumstances as he is of knowing where his non-political interests lie. The mere extirpation of such metaphysical trappings as the general will, the common good, and the social contract does not disprove the facts to which they refer. It does not deny the existence of political unity in the tacit understanding to abide by due processes of law, whatever the content of a given law may be. And this underlying unity is not explained by the paradox of unity-in-diversity, adduced by Mr. Magid, any better than by the variations of "formal *a priori* unity" which he rightly criticizes.—HENRY JANZEN.

Amid the flood of confused and ephemeral books on the conflict between Democracy and Totalitarianism, it is pleasant to encounter one of exceptional quality. This is *Democracy Is Different* (Harper and Bros., pp. 230, $2.50), edited by Dean Carl J. Wittke of Oberlin College. The volume consists of chapters originally presented as a series of public lectures by various scholars in economics, history, philosophy, political science, and letters. The plan of the book is to contrast the nature and operation of Democracy, Communism, and Fascism by presenting an analytical and historical account of each. Although space compels brevity, the plan is a good one, and it is carried out admirably. The exposition of democratic origins by Dean Wittke and the discussion of the power and appeal of Marxian philosophy by Professor Oscar Jászi are excellent. Other chapters dealing with the origins and operations of Communism and Fascism are lucid and concise. In spite of its scholarly calm, however, the book is suffused with a sense of anxiety. Designed to "defend" democracy, the

admission that democracy needs defense affects the argument of every chapter. In common with most of us who defend democracy these days, the authors of this book are afraid. They are afraid that the people who still live in democracies will not defend them. They are afraid that people who have lost their democracy, as Lord Bryce said, will soon forget it and will not greatly miss it. They are afraid that the state the world is in may constitute a *bona fide*, and not merely a *prima facie*, case against democracy. They are afraid that democracy does not possess capacities for adaptation, and the authors generally agree that adaptation is essential. They are afraid of the effect of years of criticism of democracy among ourselves, and of the effect of our preoccupation with its shortcomings. Defenders of democracy can ponder with profit Flaubert's dictum: "We cannot disparage those we love without alienating ourselves from them; we must not touch our idols, the gilt sticks to our fingers." This book clarifies in many ways the state of the democratic faith in our times.—HAROLD W. STOKE.

The Psychology of Social Movements (John Wiley and Sons, pp. 270, $2.75), by Hadley Cantril, is a study of why men act the way they do in social groups. Part I presents a systematic and basic conceptual framework for the analysis and explanation of any social movement, to show a person what to look for when he sets out to understand any such movement. In Part II, the author proceeds to an analysis, according to the pattern just presented, of five particular social movements, all more or less spectacular, which he regards and presents as prototypes of many other movements, namely, the Negro lynching mob, Father Divine's "kingdom," the Oxford Group, the Townsend Plan, and the Nazi party. The chief purpose of the study is the search, through the tangle of mental context and motivation, for concepts that will account for the behavior of man in his social life, and the author discards various theories for a "purely functional" explanation. This is presented in basic pattern form, both as a thesis and for the analysis of any social movement. In addition to his analysis of the five typical social movements that he has chosen and investigated, Dr. Cantril essays to fulfill a sense of responsibility which he thinks the psychologist bears to express specific value judgments concerning the merits of any social movement that he may be privileged to analyze. The book really embodies, then, three elements: a general psychological pattern, of a functional character, for appraisal of motivation in social groups; an analysis of five notable movements from this viewpoint; and an evaluation of the merits of each of these. The book is written in a direct, lucid, interesting style and contains a wealth of specific factual material.—H. R. BRUCE.

As an educational adventure, institutional economics has made haste slowly. Few introductory texts have appeared in the field. It may be that this is due to a more or less normal cultural lag; or it may be that the diffusive character of institutional writing and the lack of a well-defined school of thought or a coherent and disciplined body of knowledge have discouraged attempts to introduce the beginning student to the field of economics through the institutional approach. In Russell A. Dixon's *Economic Institutions and Cultural Change* (McGraw-Hill Book Co., pp. 529, $3.00), we have a new introductory text. Six institutions are discussed: property, the price system, free enterprise, technology, the corporation, and consumption. This list by itself will raise questions as to the definition of "institution," and it is readily apparent that a book limited to these topics does not present a comprehensive introduction to the field of economics. Nevertheless, the material is well organized and clearly written, and it includes a good discussion of property—the omission of which is the chief defect of the leading introductory text in institutional economics (*Economic Behavior*). A part of the book is devoted to each institution, and there is a selected and briefly annotated bibliography at the end of each part. Also, at the end of each part, several paragraphs are devoted to an "evaluation" of the institution just discussed. The omission of production, land, agriculture, labor, and the market, in the sense that none of these factors is given well-rounded treatment, is a genuine defect. Of these, the market receives most attention, in the section on the price system. For those unacquainted with institutional economic writing, the volume is a readable introduction to some of the major subjects discussed by institutionalists.—HARVEY PINNEY.

Without a doubt, Richard A. Lester's *Economics of Labor* (Macmillan Co., pp. xv, 913, $3.75) is the most thorough and lucid text to appear in the field of labor economics in recent years. Happily, Professor Lester has not made the common mistake of forgetting that labor relations, to be realistic, must be integrated with other branches of economics such as price policy and monetary theory. Perhaps the best feature of the book is the discussion of the economics of collective bargaining in relation to monopolistic competition. Although the author's emphasis has been placed upon the economics of labor in its practical application, he has not ignored such essential material as current trade union history and government's new rôle towards organized labor. Also welcome are six chapters on collective bargaining in particular industries. The author's style is extremely readable. Incorporating the labor theories of such economists as Keynes, Joan Robinson, and J. M. Clark, his presentation should make the latters' views intelligible to the average student. Falling in a bitterly

controversial field, Professor Lester's courageous eclecticism will be disappointing to partisans. But from the viewpoint of stimulating the student to an intelligent appreciation of the crux of labor's current problems, the book will not soon be surpassed.—HAROLD W. DAVEY.

The "Annual Lecture on a Master Mind" of the British Academy was delivered in 1939 by G. P. Gooch. His subject was *Hobbes* (Reprinted from the *Proceedings of the British Academy*, Vol. XXV, London, Humphrey Milford, pp. 42). The lecture contains biographical data and a synoptic treatment of Hobbes' works. In assessing Hobbes' importance, Professor Gooch gives added proof of his historical insight by stressing Hobbes' contribution to the secularization of thought and the originality of his political philosophy; and he properly minimizes the reputed indebtedness of Hobbes to Machiavelli and Bodin. The historical temperament of Professor Gooch, however, also seems to obscure his vision of the proximate, as is indicated by his intimation that modern totalitarianism is of Hobbesian derivation. In this reviewer's opinion, the obvious parallels between the two philosophies are historically and philosophically less important than the divergences. Hobbes' individualistic, egoistic, "utilitarian" premises could not possibly be the ingredients of an ideology which derives man's individuality from his position in the state, and which insists on thoroughgoing *Gleichschaltung*.—HENRY JANZEN.

The Defense of Freedom (Cornell University Press, pp. 63, $1.25) consists of four addresses on the present crisis in American democracy by Edmund Ezra Day, president of Cornell University, with an Introduction by Carl L. Becker. Throughout the book, President Day maintains the thesis that the democratic way of life offers the best means of preserving and promoting human civilization. Because of this deep conviction, he considers it vitally important to analyze the dangers that threaten our democracy and to discover means and methods of combatting them. Among the serious threats discussed are (1) the armed aggression of totalitarian states, (2) the disappearance of the feeling of economic security on the part of millions of our citizens, and (3) the internal social discords which promote insecurity and restiveness of spirit and personality. In the address entitled "The Discipline of Free Men," President Day offers as the focus of our efforts to maintain effective democracy the strengthening of the individual personality and spirit through the enrichment of opportunities for personal growth and development. The book is constructive and encouraging throughout.—CATHERYN SECKLER-HUDSON.

Michael Hrushevsky, a Ukrainian nationalist and for a short time in 1918 president of the "Ukrainian Republic," spent the greater part of his

life writing a ten-volume *History of Ukraine*. The first volume appeared in 1898 and the tenth came out after the author's death in 1934. In 1911, however, he published a popular one-volume illustrated history of the Ukraine; and *A History of Ukraine*, edited by O. J. Frederiksen with a preface by George Vernadsky (published for the Ukrainian National Association by the Yale University Press, pp. xiv, 629, $4.00) is a translation of a Ukrainian edition of this volume, published in Winnipeg, Canada. A final chapter bringing it up to date was written by Professor Frederiksen. The volume traces the history of the Ukraine from ancient times to the reunion of the Ukraine under Soviet rule in the fall of 1940. Throughout its pages, the author holds to the thesis that the Ukrainians are and have always been a separate and distinct nation. Many controversial points of Slavonic history, such as the "Kievan period," are interpreted from the nationalist Ukrainian standpoint. It is truly a "patriot's" history, written by a man with a mission—the establishment of an independent Ukrainian state. There is ample testimony in its pages that the book was prepared primarily for the encouragement and inspiration of the author's fellow-countrymen. Four maps, a bibliography, and an index complete the volume.—B. W. MAXWELL.

The biography of a talented colonial lawyer and political leader who failed to recognize the revolutionary dynamite in the dispute between the American colonies and Great Britain and sought to solve the problem by the middle way of compromise is the contribution of Julian P. Boyd in *Anglo-American Union; Joseph Galloway's Plans to Preserve the British Empire, 1774–1788* (University of Pennsylvania Press, pp. x, 185, $2.00). The author has done an excellent historiographical job in depicting the environment and checkered career of the prominent loyalist, Joseph Galloway, and has published from manuscript Galloway's various plans to preserve union between the colonies and England. The volume presents objectively a study of the loyalist mind and should be of interest to students of American political theory as well as to historians.—BENJAMIN H. WILLIAMS.

RECENT PUBLICATIONS OF POLITICAL INTEREST
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CLYDE F. SNIDER

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AMERICAN GOVERNMENT AND PUBLIC LAW

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